

IN THE MATTER OF ARBITRATION BETWEEN

CROW WING COUNTY
(Employer)

and

DECISION
(Discharge Grievance)
BMS Case No. 12-PA-0072

LAW ENFORCEMENT
LABOR SERVICES, INC.
(Union)

ARBITRATOR: Mr. Frank E. Kapsch, Jr.

DATE AND PLACE OF HEARING: The hearing took place on January 18 and 19, 2012 at the Crow Wing County Administrative Center located in Brainerd MN.

RECEIPT OF POST-HEARING BRIEFS: Both Parties submitted timely briefs as of March 2nd, 2012.

APPEARANCES

FOR THE EMPLOYER:
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FOR THE UNION:
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JURISDICTION

The Parties stipulated that this Arbitrator has been properly selected and appointed in accordance with the provisions of *Article 6 – Employee Rights Grievance Procedure* of the applicable labor agreement and that he thereby possesses the authorities, responsibilities and duties as set forth therein to hear and resolve this dispute.

THE ISSUE

The Parties stipulated that the Issue is; Did the County of Crow Wing violate the collective bargaining agreement by terminating XX XXXX without just cause? If so, what is the appropriate remedy?

THE EMPLOYER

Organized in 1857, Crow Wing County, Minnesota is located at the confluence of the Crow Wing River and Mississippi River in north central Minnesota. The County Seat is located in the City of Brainerd. The County encompasses some 1000 square miles and includes some 45 cities and townships with a total of population of about 62,500 residents. The County population almost triples in size during the summer tourist season. The County government includes a Sheriffs Department consisting of an elected Sheriff and some 40 licensed Deputies including a Chief Deputy, a Captain, about four Lieutenants and a half dozen Sergeants. The Department's operational functions include Administration, Patrol, Investigations, Water Safety, the County Jail, etc. Total Department employment, both licensed and non-licensed employees, is about 130.

THE UNION

Law Enforcement Labor Services, Inc. is Minnesota's largest labor organization dedicated solely to the representation of law enforcement employees and related personnel throughout the State of Minnesota. The Union is headquartered in St. Paul MN and has numerous collective bargaining relationships and agreements with various cities, counties and other political subdivisions within the State of Minnesota; including Crow Wing County and its Sheriff's Department.

COLLECTIVE BARGAINING HISTORY

Crow Wing County and Law Enforcement Labor Services, Inc. have had an ongoing collective bargaining relationship, reflected in various successive labor agreements with respect to the licensed Deputies and Investigators employed in the Sheriffs Department for a number of years. The current applicable labor agreement was effective January 1, 2010 and was scheduled to expire on December 31, 2011. The Parties agree that this agreement is applicable to this matter.

BACKGROUND

The following is a factual summary based on relevant and undisputed record testimony and evidence submitted by the Parties in the course of the hearing:

As noted in the Statement of the Issue, this matter concerns the discharge of XX XXXX from his employment as a Deputy Sheriff and K9 Handler in the Crow Wing County Sheriffs Department on or about April 13, 2011 for alleged insubordination.

Deputy XXXX's tenure with the Sheriffs Department commenced with his hire in 1997. XXXX followed in the footsteps of his father, who had also worked in the Department.

Within his first year or so of employment XXXX routinely and satisfactorily worked as an Officer in the Patrol Division. In that capacity, he worked a shift schedule routinely Patrolling a designated area in a vehicle and responding to any Calls for Service or assistance from citizens or other officers.

After serving about a year as a Patrol Officer, XXXX was designated to be the Department's Canine Officer and was assigned a trained dog "partner". XXXX was personally responsible for the care, training and well-being of his four-legged partner. Over the course of the next nine years or so, Deputy XXXX performed his job duties as the Canine Officer in a most exemplary and commendable manner. His talents and that of his canine partner became widely recognized elsewhere within the State of Minnesota and, in fact, within the Upper Midwest region.

However, at some point in about 2006 and continuing into 2007, the Department's managers, supervisors and his work colleagues began to note a change in his demeanor and attitude toward his work. The conclusion was that XXXX was demonstrating an increasingly negative attitude to everyone around him, including members of the public; whom he was pledged to protect and serve. Apparently preliminary, informal efforts by various managers and supervisors to get him to recognize the problem were unsuccessful. Finally, on November 28, 2007 XXXX was formally notified by the Department that he was being removed from his position as a Canine Officer and would be returning to his duties solely as a Patrol Deputy. The next day, November 29, 2007, he was called into a meeting with Captain Neal Gaalswyk and Lieutenant Dennis Lasher, the supervisor of the Patrol Division and his immediate supervisor. Gaalswyk and Lasher proceeded to inform XXXX that he was being removed from his canine duties so that he could focus his attention on meeting the Department's expectations that would be outlined in a Performance Improvement Plan (PIP) designed to address his negative attitude and demeanor. They pointed out that the situation had reached a point where it was adversely affecting both his relationships with co-workers, but also members of the public with whom he had contact.

XXXX was told he would receive the formal written PIP on December 4, 2007. He was assured that the PIP was not a disciplinary action, but rather a coaching tool to assist him in improving his attitude in the workplace.

On November 30, 2007, XXXX, who was also an official in a national organization of Canine Officers, sent out a routine message to the organization's members which initially talked about some training material that he was sending out. Then he noted, "...I have become the victim of politics within an agency. I had my dog taken away by the department and am no longer in our K-9 unit." The message clearly indicated that he was sending the message as a member of the Crow Wing County Sheriffs Department.

On December 4, 2007 Captain Gaalswyk met with XXXX and presented him with the detailed PIP. The document indicated at the outset that the Plan was intended to correct three (3) noted deficiency areas; 1) XXXX's negative attitude, as evidenced by critical comments regarding the performance of other co-workers together with a sullen demeanor that adversely affects both himself and others around him, 2) Negative and confrontational attitude and demeanor in dealing with the public that results in citizen complaints and 3) Non-support of Administration decisions and leadership that is demonstrated by challenging supervisors directly and by speaking critically and negatively regarding such decisions and leadership to other employees in violation of policy.

The PIP document went on to outline specific actions and behaviors that XXXX was expected to adopt to correct each of the deficiencies noted. The duration of the PIP was to be not more than six (6) months. The PIP provided that his performance, relative to the PIP, would be reviewed with him on a bi-weekly basis.

Following a detailed review and discussion of the PIP document, the only objection that XXXX had was to the alleged deficiencies relating to the general public. After some discussion on that topic, Captain Gaalswyk agreed to delete the references and provisions to the general public from the PIP. The revised PIP document was presented to XXXX on December 13, 2007 and he agreed to it and signed it.

Meanwhile, on December 11, 2007, XXXX was issued a formal written Warning by Lieutenant David Larson. The Warning was discipline for his transmittal of the email message on November 30, 2007 to the members of the K-9 association falsely accusing the Department of taking his dog away because of "politics". The Warning noted that his message constituted a clear violation of Department policies which prohibit such messages which tend to bring the department or its administrative officers into disrepute or ridicule and which destructively criticize the department or its members in the performance of its official duties. XXXX acknowledged receipt of the Warning and no grievance was filed.

In subsequent written PIP Performance Assessments by Sergeant Chad Paulson, his supervisor, at the end of January, 2008 and again in March, 2008; Paulson wrote in glowing terms of XXXX's total commitment and efforts to meet

and, in many cases, to exceed the behavioral expectations of the PIP. Paulson noted that XXXX was in total compliance with both the letter and spirit of the PIP.

On March 12, 2008 the Sheriffs Department received a citizen Complaint alleging that Deputy XXXX, while on duty, had placed a slip or sheet of paper on a vehicle parked in the Judicial Parking lot near the County Courthouse. Upon examination by the vehicle's owner, he noted that the paper showed a Mickey Mouse-like character with one hand holding up the "finger" and the other hand holding a sign that read, "*Thanks for parking so well. I hope that you don't fuck like you park! You'll never get it in! Assholes like you should take the bus!*"

During the course of a subsequent formal investigation into the incident, Deputy XXXX was unable to offer any specific explanation as to what motivated him to place that paper on the citizen's vehicle. On March 31, 2008, Sheriff Todd Dahl imposed a 30 day Suspension without pay upon him. XXXX acknowledged the disciplinary action, served the suspension and no grievance was filed. It was noted that XXXX, prior to the disciplinary action, had, on his own volition, attempted to contact the vehicle owner, without success, in an effort to apologize to him. The disciplinary action required him to submit a letter of apology through the Chief Deputy for transmittal to the vehicle owner. In the disciplinary action document, Dahl specifically noted that "*This is your last chance*" and that he needed to correct his behavior and comply with Sheriff's Office and Crow Wing County policies, directives and performance expectations. If he failed to do so, he would place his employment with Crow Wing County in jeopardy.

In addition to the preceding disciplinary action, Captain Gaalswyk reviewed XXXX's PIP, which was still in effect from December, 2007. He subsequently modified and updated it to; 1) extend its duration from six (6) months to an additional twelve (12) months and 2) added back the performance expectations that had been previously deleted as relating to XXXX's conduct with respect to the general public.

Captain Gaalswyk presented the revised and updated written PIP to XXXX on or about May 24, 2008 for his review and acceptance. On June 5, 2008 XXXX signed off in agreement with the provisions of that PIP.

During the subsequent period from June through December, 2008 there is no evidence from the Department that XXXX was having any problems with adhering to the requirements of his PIP.

However, on or about January 22, 2009 apparently Deputy XXXX somehow found out that the Department was going to be retrieving and reviewing text messages sent and received by certain Deputies. He responded to that information by sending a text message to several of his Deputy colleagues that stated; "*Watch ur text messages boys. They tryn 2 pull archives. If u send or received something questionable, erase A.S.A.P.*"

Apparently, Lieutenant Dennis Lasher subsequently became aware of XXXX's text message to the other Deputies and filed a written Complaint charging XXXX with violating unspecified Sheriff's Department policies and procedures and, additionally violating the requirements, again unspecified, of his current PIP.

On February 25, 2009, Sheriff Dahl sent a Memorandum to XXXX advising him that in light of his text message of January 22, 2009, serious consideration was being given to terminating his employment with the Department. The Memo invited XXXX to attend a meeting on February 27, 2009 to present any information which he believed should be considered as to why he should not be terminated. He was advised that he could bring Union representation to the meeting.

As a result of the subsequent meeting with Sheriff Dahl and Chief Deputy Debi Backdahl, XXXX acknowledged that his text message of January 22, 2009 was totally inappropriate and constituted a violation of his then current Performance Improvement Plan (PIP). He reiterated his commitment to the requirements of his PIP and acknowledged that he was fully aware of the future consequences of further incidents of non-compliance with his PIP.

In a follow-up Memo to XXXX after the meeting, dated March 17, 2009, Chief Deputy Backdahl confirmed the foregoing and noted that, "*It is critically important that you understand that further instances of non-compliance will result in termination; this is in effect your final chance [emphasis applied]."*

On or about April 8, 2009 the Department prepared and presented Deputy XXXX with an Addendum document to be incorporated into his existing PIP dating back to May, 2008. The Amended PIP was to be effective to December 31, 2009. The Amended PIP added several new requirements to those set forth in the existing PIP, specifically addressing XXXX's phone messages and texts. He was required to provide proxy access for the Department to his County-owned email account and to maintain text or image messages sent or received on his phone for periodic review by his immediate supervisor or another Department administrator. He was also encouraged to meet with his immediate supervisor once per shift to discuss his work plan for the day and to review and discuss his actual work performance on his previous shift. The stated goal of this suggested requirement was to provide him with immediate coaching recommendations and feedback to assist him in fulfilling his duties and responsibilities per the PIP. Finally, XXXX and his immediate supervisor were to agree upon and signoff on a written evaluation of his performance per his PIP. These reports were to occur at least twice per pay period for the duration of the current PIP.

On April 13, 2009, Deputy XXXX agreed to and signed off on the new Amended PIP, to be effective until December 31, 2009.

On October 5, 2009, Sheriff Dahl sent Deputy XXXX a Memo advising him that he had reviewed the Performance Improvement Plan assessment and evaluation reports compiled by Sergeant Paulson and the other immediate supervisors over the course of the past 12 months. Dahl stated that, based on those reports, he was personally satisfied that XXXX had successfully met all the requirements of the Plan. He stated that XXXX would no longer be subject to the review provisions of the PIP, as he believed that XXXX had demonstrated that he was capable of and willing to meet the performance standards outlined in the PIP on an ongoing basis.

On or about October 9, 2009 Deputy XXXX resumed his position as a K9 officer with the Department. His new canine partner was a dog named "Oakley".

In XXXX's Annual Performance Appraisal for calendar year 2009, his supervisor, Sergeant Chad Paulson, rated him Highly Proficient (consistently exceeds expectations) on all three Key Accountabilities relating to his work performance in the field and on Patrol. On three related Core Factors, including Quality of Work, Customer Service and Team Relations, Paulson rated him Highly Proficient, Solidly Proficient and Solidly Proficient, respectively. In his Overall Performance Appraisal, Paulson stated, *"At the beginning of 2009 and through the middle half of 2009 XXXX was on a workout plan where evaluations occurred bi-weekly. XXXX, through this plan, has made a 180 degree turn in the right direction. He communicates in a positive manner and also accepts communications in a positive manner. XXXX's work productivity is above average in his thoroughness on investigations and the resources that he uses. He completes his work in a timely/thorough manner. XXXX has used his second chance to foster a positive approach to his job serving as a role model for other deputies."*

On November 14, 2010, Sergeant Andy Galles issued a memo to XXXX imposing a number of restrictions on XXXX with respect to his routine official communications, i.e. all such communications were to be submitted to his immediate supervisor for clearance/approval prior to sending and that all such communications contain a salutation and a signature. The memo also imposed restrictions on K9 training schedules and locations, in addition to tighter budget restrictions re: the K9 program. Unfortunately, the neither the memo itself nor the hearing record are clear as to why these restrictions were imposed.

According to XXXX's Annual Performance Appraisal for calendar year 2010, his supervisor, Sergeant Galles rated him Solidly Proficient, Highly Proficient and Highly Proficient on the three Key Accountability areas directly relating to field and Patrol work. On four Core Performance factors, Sergeant Galles rated him Solidly Proficient on each. These factors included Customer Service and Team Relations and Self-Management. With respect to XXXX's Overall Performance Appraisal, Sergeant Galles stated, *"As discussed above, XXXX has areas that he excels in and areas in which there needs some improvement. After meeting with him regarding this Appraisal, he maintains a positive demeanor. He was able to*

recognize both areas and wants to work on them.” Relative to the “improvement” items, Galles mentioned, 1) that he’d like to see XXXX more fully utilize his squad car camera as a tool to document and confirm evidence, 2) that he’d like to see XXXX more carefully check his grammar in reports and 3) that he needs to be careful not to exhibit his work frustrations in emails or over the radio. Galles also noted, *“I think XXXX has taken on more than he is able to handle at times and this is identified by his statements regarding K9 training time. XXXX does not loaf or idle. I think his various side projects relating to K9 need to be lightened, delegated or relinquished so that he doesn’t feel so overwhelmed with excess work load and running a successful K9 program.”*

Sergeant Galles and Deputy XXXX each signed off on the completed Appraisal on February 21, 2011 and Lieutenant Dennis Lasher, the manager of the Patrol Division, approved it on the following day.

At some point in about December, 2010 or January, 2011 the Sheriffs Department commenced a project to renovate and rehabilitate an area of its offices known as the “Squad Room”. The Squad Room consists of cubicles with desks and filing space where Deputies coming in off the street can hang their hat, do paperwork, reports and phone calls, etc. and keep relevant work records and equipment.

By the latter part of February, 2011 it was estimated that the renovation project would probably be completed by sometime in March. For some of the Deputies, one item of concern was what was going to be the fate of their personal filing cabinets that had been part of the old Squad Room. During the course of the renovation project, those cabinets had been moved out in an adjacent hallway to clear the Squad Room for the renovation work crew.

XXXX was one of the Deputies who had a personal file cabinet out in the hallway. On February 17, 2011, XXXX, who was getting ready to depart on vacation shortly, sent an email to Lt. Lasher, through Sgt. Galles. The email read; *“Lt. Lasher, Good day sir. With the new set up, am I able to keep my 4 drawer personal file cabinet to be place at my work location? Sincerely, XXXX XXXX.”*

On February 21, 2011, Lt. Lasher responded, *“XXXX, I know I’ve sent out a lot of emails on this project, and they are all hard to keep track of. You’ll be able to keep the large filing cabinets if there’s room for them, and if they can be put in a location that looks decent. If not they’ll have to go, we don’t want them in the hallways. We’ll take a look at it as soon as the squad room is complete. Thanks, Lash.”*

Deputy XXXX subsequently left on vacation on or about February 22 and was not scheduled to report back to work until Tuesday, March 15, 2011.

Meanwhile, on March 2, Lt. Lasher issued an email to all Deputies. The message read, *“All- There will not be any open room in the squad room for filing cabinets, other than the ones that are being installed in the new cubicles. Please remove your personal filing cabinets from the building ASAP. Thank you, Lt. Lasher”*

On March 3, Lt Lasher issued another email to all Deputies. The message read, *“All- The squad room is complete, and you may move your belongings into your new work stations. As stated before, the tall file cabinets won’t be brought back into the squad room. However, once everyone is moved out of the old 2 drawer cabinets we will move a bank of them back into the squad room for some additional storage. Both of the new file drawers at the work stations don’t have 2 drawers, and some space is lost. Thank you. Lt. Lasher”*

On March 9, Lt Lasher sent another email to both the Clerical staff and the Deputies. The message read, *“All- Items placed in the LEC hallways from the move must be removed, or moved to your work stations by Friday, March 18. Any items left in the hallway on March 18th will be considered garbage and disposed of. Reminder that when moving back into the cubicles, keep the area clutter-free and throw out/take home items that are not needed. Deputies – if you drew the file drawer at your work station that has only one drawer, you can take one drawer from one of the file cabinets by the kitchen area. You may have to wait until deputies remove their items from those cabinets, which also needs to be done by March 18th. Thank you. Lt. Lasher”*

On Monday, March 14, Lt. Lasher apparently routinely arrived at the office and when he looked in the Squad Room, he immediately noted that someone had brought XXXX’s personal 4 drawer file cabinet from the hallway and had placed it next to his assigned work station. Lasher apparently also checked the building access log and discovered that XXXX, although still on vacation, had logged into the building on Sunday, March 13th and was in the building from about 3:00PM until about 5:30PM.

Lasher subsequently sent an email to Sgt. Galles. The message read, *“Andy, Find out why XXXX has put his 4 file cabinet back in the squad room after at least 3 different emails were sent out by me saying not to. If you for some reason you let him do it, please fill me in. If he did it without approval, its gone the day he comes back to work and a feedback form is in order. Lash”*

Neither XXXX nor Galles were on duty on March 14th.

XXXX reported back to work routinely, from vacation, on March 15th. He, Lasher, Galles and other Deputies attended a routine training seminar for much of the day. Over lunch, Sgt. Galles advised XXXX that Lasher was upset about the fact that XXXX had moved his file cabinet back into the Squad Room and that he needed to get it out ASAP. According to Galles, XXXX allegedly became

angry and argued that he needed the extra file space and that other deputies had more file space than him in the new Room. He also contended that the system was not fair and equitable because Sergeants got more file space than deputies. Galles said he told XXXX that Lasher wanted the cabinet out of the Squad Room and said it had to go. According to Galles, XXXX didn't give him a specific response on that point.

The next day, March 16th, Galles approached XXXX and reminded him that the file cabinet had to be removed from the Squad Room ASAP. XXXX said something to the effect that it would be out by Friday – Galles took that to mean Lasher's previously announced deadline of Friday, March 18th for removal of all personal and extraneous items from the Squad Room and the building. Galles said he understood that Lasher wanted XXXX's cabinet out of the Squad Room that day, March 16. During a subsequent formal investigative interview, Galles' best recollection was that XXXX finished transferring his files from his 4 drawer cabinet to his new file cabinets on Thursday, March 17 and that he removed the cabinet from the Squad Room that same day. Galles also confirms that XXXX's file cabinet was no longer in the hallway by Lt. Lasher's March 18 deadline.

Meanwhile, Lasher, on his own initiative, decided to remove XXXX's file cabinet from the Squad Room and placed it back out in the hallway sometime on March 16th. Concurrently, Lasher sent XXXX an email message, as of 3:04PM on March 16, that said, *"Your 4 drawer file cabinet was removed from the squad room and put back in the hallway. If you own it, it needs to be removed from the LEC [the building] by Friday [March 18]."*

Later that same day, at 7:49PM, XXXX replied to Lasher's email. *"ok...thanks I guess. I moved it so I had easy access to move my stuff out of it without making so many trips to organize my stuff before I moved it out. But will do.4"*

The record establishes that XXXX returned to the office on the evening of March 16, brought his file cabinet back into the Squad Room and finished transferring his files and materials into his new cabinets. He was assisted in that task by Deputy Kelly Park. XXXX completed that task and the cabinet was subsequently out of the Squad Room and out of the building by the evening of March 16. XXXX believes that Sgt. Galles was personally aware of his actions to complete the removal of the file cabinet from the Squad Room and the building on the evening of March 16.

There apparently were no further conversations, emails or other discussions of the file cabinet situation between Galles, XXXX or Lasher, after Lasher's email exchange with XXXX on March 16.

On March 22, 2011, Lt. Lasher filed a formal Complaint against XXXX. According to the Complaint, the date of the Incident was March 13, 2011 and the place was the Squad Room. The Incident Description states;

On 3-13-11 Deputy XXXX moved a tall file cabinet into the squad room. Shortly after moving the cabinet into the squad room Deputy XXXX opened and read two separate emails from Lt. Lasher that clearly stated that the tall file cabinets were not allowed in the squad room. Deputy XXXX remained in the squad room for approximately 45 minutes after reading the first email and made no attempt to remove the tall file cabinet. He then left the building.

On 3-15-11 Deputy XXXX talked with Sgt. Galles. He told Sgt. Galles that he did receive the directives from Lt. Lasher but said he needed the space and the cabinet was out of the way and not harming anyone. Sgt. Galles directed Deputy XXXX to remove the cabinet.

These actions by Deputy XXXX were in violation of Policy 100.6 Co-Worker Relations. Specific sections include: 6-3 Conduct toward Supervision and 6-5 Insubordination.

Note: The Employer's standing work rules contain the following specific provisions:

Policy 100.6 Co-Worker Relations.

6-3 Conduct Toward a Supervisor

Every employee shall respect and promptly obey orders of a supervisor regardless of division assignment. Employees shall not publicly criticize or make derogatory comments on orders received from a supervisor. This includes orders relayed from a supervisor by an officer of the same or lesser rank.

6.5 Insubordination

Employees shall not refuse or fail to obey a lawful order given by a supervisor. Ridiculing a supervisor, or his/her orders, whether in or out of their presence, constitutes insubordination. Disrespectful, rebellious, or abusive language or gestures toward a supervisor are insubordination.

Lt. David Larson was subsequently appointed to investigate Lasher's Complaint. Larson subsequently conducted formal interviews with Sgt. Galles on March 24th and with XX XXXX on April 4, 2011.

On April 5, 2011, Lt. Larson submitted his formal report, with respect to Lasher's Complaint of March 22, to Sheriff Dahl. In the Conclusion section of his report, Lt. Larson stated;

Deputy XXXX moved a large file cabinet into the squad room. He opened emails from Lt. Lasher indicating that this was not allowed and he did not remove the file cabinet. Deputy XXXX later talked with Sgt. Galles at a restaurant in the presence of another deputy, and tried to justify his need

for the cabinet. He was obviously and admittedly angry about the decision made by Sheriff's supervision. He later made a comment to Sgt. Galles about the actions of Lt. Lasher. He was angry and questioned his actions of removing the file cabinet.

Deputy XXXX stated that he was venting to his immediate supervisor [Galles] and that the Sheriff's Administrators have told him he should go to his immediate supervisor to vent. It is clear that Deputy XXXX did not do this in an appropriate manner.

Lt. Larson noted three separate work performance documents drafted specifically for Deputy XXXX which discuss this type of action toward supervisors as being inappropriate.

RECOMMENDATION

It is Lt. Larson's opinion that the complaint of MISCONDUCT against Deputy XXXX be classified as SUSTAINED. Specifically, 100:6 Co-Worker Relations. Section 6-3: Conduct Toward a Supervisor and Section 6.5: Insubordination.

On April 7, 2011, Chief Deputy Backdahl sent a letter to Deputy XXXX advising him that serious consideration was being given to terminating his employment with Crow Wing County. Backdahl noted that the investigation into Lt. Lasher's Complaint of March 22 had sustained the allegations contained in that Complaint and concluded that XXXX had engaged in misconduct in violation of *Department Policy 100:6 – Co-Worker Relations, Section 6-3 Conduct Toward a Supervisor and Section 6-5 Insubordination*. She noted that he acknowledged receipt, in March, of email communications from Lt. Lasher and verbal communications from Sgt. Galles directing him to remove a file cabinet from the squad room. According to Backdahl, XXXX failed to comply with those directives and instead tried to justify why the directives should not apply to him and why he should not be required to comply.

The letter further stated that previous coaching, discipline, work plans and counseling have clearly identified performance expectations and the consequences of non-compliance, including termination of employment. It further noted that there is a XXXXtern of disregard for authority and respectful workplace conduct. It is a repetitious cycle that fails to demonstrate any sustained improvement.

Finally, Backdahl noted that, in addition to the current matter of insubordinate behavior, in the last two years we have addressed team and customer relations in the 2010 performance review, provided a written notice of performance expectations and directives in November 2010; addressed a complaint involving offensive comments in October 2010; and provided a notice of performance

expectations and final warning in March 2009 following a Loudermill¹ hearing relating to inappropriate conduct. That came on the heels of a 30-day suspension served in 2008, a written warning in 2007 and various other performance-related documentation.

The letter specifically invited XXXX to attend a Loudermill hearing on April 12, 2011 to give him an opportunity to provide information relating to this matter and his employment that he would like considered by the Department, as termination was being considered.

Deputy XXXX did attend the hearing on April 12. Also present were Sheriff Todd Dahl, Lieutenant Dennis Lasher, Lieutenant David Larson and LELS Business Representative Brooks Bass. In the hearing, XXXX pointed out that he had agreed to both the letter and spirit of the Performance Improvement Plans that had been formulated for him several years earlier. He had personally committed to them and noted that for the past couple of years had indeed more than fulfilled the work performance expectations set forth in those plans. He noted that he had overcome recent challenges and frustrations resulting from a change in his shift schedule that adversely affected his family life and also noted some new restrictions that had been placed on his K9 training schedule and activities after the recent Sheriff election back in November, 2010². He said he “bit the bullet” and readily complied with those changes.

With respect to the issue of the file cabinet, XXXX noted that he had been off work and on vacation from about February 23 until March 15, 2011. He noted that unlike the rest of the Deputies, he was not available to move into his new work station in the remodeled Squad Room starting March 3. He also wasn't aware of Lt. Lasher's various emails to the deputies in early March re: the filing cabinet situation; until he decided to go to the office on Sunday, March 13. After reading those emails, he concluded that according to Lasher, all the personal file cabinets had to be gone by Friday, March 18. He noted that, unlike the other deputies, who had since March 3 to organize and move their files and belongings to their new work stations, he had only 2-3 days to accomplish that task. He was scheduled to go to the Twin Cities on Monday, March 14, his last day of vacation, was scheduled to attend training on March 15, his first day back at work and after training had to drive to Willmar to pick up his kids. However, he concluded that he would have sufficient time on Wednesday and Thursday, March 16 and 17 to complete the transfer of the files and equipment from his personal cabinet to his new work station files and that schedule would easily accommodate Lasher's deadline of March 18.

¹ See *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985). In this case, the U.S. Supreme Court held that certain public employees have a property interest in their employment and to protect that interest, they are to be afforded due process, including a hearing, prior to the employer making any determination with respect to discharge.

² Sheriff Dahl was re-elected to another 4 year term as Sheriff.

Accordingly, XXXX readily admitted that he moved his personal file cabinet, that Sunday afternoon, from the hallway back into the Squad Room. He said he did so to make it easier to quickly transfer items from one cabinet to another without having to move back and forth between his work station and the hallway.

During the course of training on Tuesday, March 15, XXXX said that Sgt. Galles informed him that Lt. Lasher was mad about him moving his personal file cabinet back into the Squad Room and wanted it out of there ASAP. XXXX said he told Galles that he would have it out by the March 18 email deadline. Galles said the cabinet had to be out by Wednesday, March 16. XXXX acknowledges that he was somewhat upset by Galles' statement that Lasher was "mad" about the filing cabinet. XXXX said that he was somewhat surprised and irritated by the fact that Galles said Lasher was mad. XXXX had expected that Lasher recognized and understood that he was just coming off vacation and would take care of the cabinet situation quickly, efficiently and by the Friday deadline. Instead, Galles was telling him that Lasher now wanted him to remove his cabinet by Wednesday, March 16, rather than the March 18 deadline set forth in Lasher's previous emails. According to XXXX, that did cause him some consternation and he apologized to Lasher for any irritated comment that he may have made to Galles about Lasher on March 15.

XXXX specifically noted that; 1) He never told Galles that he wasn't going to move his personal file cabinet out of the Squad Room or the building and 2) He did, in fact, fully comply with Lasher's abbreviated deadline date of March 16 to remove the cabinet from the building.

XXXX also pointed out that he had been routinely instructed, during the course of his PIP, that if he was feeling frustrated or irritated with Department management and/or practices, he was to "vent" those feelings and thoughts to his immediate supervisor and talk them out. This practice and procedure was to forestall XXXX from having to "vent" such frustrations to everyone else in the Department and thereby possibly causing ill feelings among both co-workers and other members of the management team. He noted that that was precisely what he did when he expressed his frustrations to Galles on Tuesday, March 15 about the whole filing cabinet situation in the remodeled Squad Room.

XXXX essentially concluded his remarks in the hearing by describing the file cabinet situation as "*Confusion*".

On April 13, 2011, Sheriff Dahl issued a letter to Deputy XXXX informing him that effective that same date, his employment with the Crow Wing County Sheriffs Department was terminated.

THE GRIEVANCE

By letter dated April 18, 2011 to Sheriff Todd Dahl, the Union filed a timely Step 2 grievance in protest of Deputy XXXX's discharge. The grievance specifically alleged that, "*This action by the Employer is in violation of the Collective Bargaining Unit, including but not limited to Article 14.*"

Relevant Contract language:

Article 14, SENIORITY, PROBATIONARY PERIODS, DISCIPLINE, RETIREMENT, RESIGNATION

14.5 – Regular employees shall be disciplined for just cause only and discipline may take any of the following forms:

- A. Oral reprimand*
- B. Written reprimand*
- C. Suspension without pay*
- D. Demotion*
- E. Dismissal*

14.9 – Employer actions under Subsection 14.5 shall be subject to appeal under Article 6 [EMPLOYEE RIGHTS GRIEVANCE PROCEDURE], provided that in the case of a discharge the grievance, if any, may be introduced at Step 2.

In the Grievance, the Union requested that as the Remedy, "*Deputy XXXX be made whole in all respects, including, but not limited to, reinstatement with back-pay.*"

On May 2, 2011, Sheriff Dahl denied the Grievance at Step 2. On May 3 the Union moved the Grievance to Step 3 and on May 20, 2011 the Employer again denied the Grievance.

On August 1, 2011, the Union formally notified the MN Bureau of Mediation Services and the Employer that it was taking the grievance to arbitration. Ergo, here we are.

SUMMARY OF THE PARTIES' MAJOR ARGUMENTS

THE EMPLOYER:

1. Insubordination: The County's Work Rules (Policy 100.6) clearly coincide with the definitions of "insubordination" found in arbitral law. In a recent arbitration decision, insubordination was defined as "*an improper response by an employee to management's exercise of authority in operating the enterprise.*" *United Parcel Service*. 127 LA 1412, 1419 (Halter, 2010).

Other arbitral views of insubordination include; 1) Insubordination is a punishable offense in the employment setting because it attacks the very

fabric from which the supervisor – subordinate relationship is constructed. 2) It is the willful challenge or disregard of an employer's directions that make insubordination inherently wrong. 3) Although insubordination is commonly defined as a refusal to obey a direct order, it also includes any manifestation of disregard for supervisory or managerial authority.

The record evidence in this matter clearly establishes that Deputy XXXX received written directives from Lt. Lasher regarding personal file cabinets in the Squad Room. XXXX did not comply with those directives. When confronted by Sgt. Galles, XXXX became angry, argued with him and challenged the order. The Sheriffs Department exists to provide law enforcement and correctional services to the community, but does not exist to serve as a debating society for malcontent officers.

Deputy XXXX engaged in insubordination and the Sheriffs Department was not required to tolerate such behavior.

2. Mr. XXXX was disciplined for grossly overreacting to a routine housekeeping order.

The record evidence demonstrates that the Department had no intention to impose discipline upon Mr. XXXX for leaving his file cabinet in the Squad Room on Sunday, March 13th. Mr. XXXX and the Union would like to have this case be about the grievant getting into trouble because a few folks got their wires crossed over where the furniture belonged. That characterization ignores the reality. On Monday, March 14, Lt. Lasher instructed Sgt. Galles, by email, to tell XXXX to move his file cabinet out of the Squad Room (to be in compliance with his earlier orders). Lasher also noted that XXXX's violation of the earlier directives merited a Feedback Form – a non-disciplinary action.

It was not until the next day, Tuesday, March 15, 2011, when XXXX refused to accept Lt. Lasher's order, as an order, that the situation escalated into a disciplinary matter. On that day, Sgt. Galles told XXXX, over lunch, that he needed to follow Lt. Lasher's direction. During this conversation, Mr. XXXX did not display any behavior that indicated that he intended to comply with that order. He did not offer or agree to move the file cabinet, tell Sgt. Galles he was confused or did not understand the series of emails and orders he had received or state that he needed more time to comply. Instead, as he admitted, XXXX became angry and launched into a series of arguments that, 1) because of his additional canine duties, he needed more file storage space, 2) he should have more file storage space because Sgt. Paulson had more and 3) he argued that there was a "double standard" operating in that sergeants got more file storage than deputies.

The Employer did not simply discharge XXXX because he allegedly misunderstood some emails, but because he verbally challenged and rebelled against Lt. Lasher's order that disciplinary action was considered.

3. The Grievant was guilty of insubordination.

- A. Mr. XXXX was on notice as of March 13, 2011 that Lt. Lasher had already made a decision to disallow personal file cabinets in the newly remodeled Squad Room. When Sgt. Galles brought up the file cabinet issue with XXXX on Tuesday, March 15, XXXX was already aware that the subject was not being presented to him as a proposal to be argued or debated. He knew that Lt. Lasher had clearly made a decision with respect to the file cabinet situation and that Sgt. Galles was merely instructing him to abide by that decision, but he chose to argue anyway.

XXXX admitted that he had read Lt. Lasher's email of March 9 which stated that the personal file cabinets, then out in the hallway, would not be going back into the newly remodeled Squad Room, but subsequently did so anyway. He testified that he believed this email was intended to give him until March 18 to get his file cabinet out of the squad room and the building. In relying on Lasher's March 9 email with respect to the March 18 deadline for removal of all personal file cabinets from the building, XXXX said that someone must have noted the fact that he was on vacation until March 15 and decided to give him until March 18 to move his cabinet. However, he was unable to explain why the March 9 email wasn't sent just to him but to all the deputies.

XXXX then argued, alternatively, that perhaps the March 9 email from Lasher was only for him because perhaps he was the only one with a personal filing cabinet in the squad room at the start of the remodeling project. Other witnesses credibly testified that there were perhaps 5-6 personal file cabinets in the squad room, prior to the start of the remodeling project. Finally, the Arbitrator asked XXXX why Lasher sent the March 9 email to all the deputies, if he was the only one who had a personal file cabinet out in the hallway. XXXX had no cogent response to that question.

On cross-examination, XXXX admitted that he had placed his file cabinet back in the squad room on March 13; contrary to the directives that he had just read in Lasher's emails. His contention that the file cabinet situation was "Confusion", was contrived. When he met with Sgt. Galles on Tuesday March 15, he knew or reasonably should have known that his actions were contrary to Lt.

Lasher's directives. Rather than acknowledge that fact and remedy the situation, he chose to argue with Galles about Lasher's directives.

- B. XXXX failed to avail himself of opportunities to avoid a conflict with his superiors over this issue.

The Department had provided Mr. XXXX with direct guidance on what to do if he was unsure what his supervisors expected of him. He was instructed to seek clarification. Nobody told him to resolve ambiguities in the manner that best suited him and then wait to see how his supervisors reacted. Each of the various iterations of XXXX's Performance Improvement Plan (PIP) contained the following guidance:

- *By seeking clarifications of directives, policies and orders that are unclear to you by approaching your immediate supervisor or other supervisors and requesting additional information for the purpose of understanding what is expected of you.*

XXXX had ample means and opportunities for communicating with his superiors on March 13, if he was "confused" by Lt. Lasher's instructions. However, XXXX made no subsequent attempt to contact either Sgt. Galles or Lt. Lasher to clarify the file cabinet instructions and offered no reason for not pursuing that course of action. He conceded that he did talk with Lt. Lasher during the training session on March 15, but neither he nor Lasher brought up the subject of the filing cabinet situation.

- C. There was nothing to argue about when Sgt. Galles spoke with Mr. XXXX over lunch on March 15, 2011.

The inexplicable folly of Mr. XXXX's case is that he believed there was something left to argue about when Sgt. Galles brought up the subject of the file cabinet over lunch on that date. Lt. Lasher had made and twice communicated a decision on how the remodeled squad room was to be furnished. XXXX was well aware of those communications at the time he had lunch with Galles. Galles simply told XXXX that he had to comply with Lt. Lasher's directives.

- D. Mr. XXXX argued anyway.

We are all well aware of the age-old labor relations axiom, "*Follow the order now, grieve it later.*"

For his part, XXXX chose to turn the “Follow the order now, grieve later.” Rule on its head. When XXXX spoke with Galles on March 15, he was already in violation of Lt. Lasher’s order. He didn’t tell Galles that he would comply with the order, promptly or otherwise. He did not claim to be confused by the series of three emails or seek clarification of the emails. Instead, he became angry and attacked the order itself.

The discharge decision should be sustained because XXXX’s behavior on March 15 toward Galles was a gross overreaction to a routine housekeeping order. It is difficult to imagine an employee reaching this kind of reactivity over a decision about office furniture.

Mr. XXXX’s conduct throughout the investigation and the arbitration hearing provide no basis for to believe he seeks to change his conduct and behavior toward the Department’s managers and supervisors. As he did in 2007, when his canine was taken from him, he again portrays himself as the “victim”. He has taken no ownership of his behavior and has expressed no willingness to examine or amend his behavior. His superiors should not have to gird themselves for battle every time the require him to comply with a simple directive.

E. Mr. XXXX knew that arguing with supervisors was unacceptable.

The following provision was always a standard provision in Mr. XXXX’s PIP:

- *Non-support of administration and leadership that is demonstrated by challenging supervisors directly and by speaking critically and negatively regarding such decisions and leadership to other employees in violation of policy.*

During his hearing testimony, XXXX attempted to defend his “rant” with Sgt. Galles on March 15 as a “venting” session and something that he had been encouraged by management to do. He points to his Performance Appraisal by Galles for calendar year 2010 as justifying his use of Galles as an acceptable sounding board for venting occasional frustration, anger and concerns with management and/or co-workers. Galles testified that his comment in XXXX’s 2010 Appraisal, page 5, Section 3, Team Relations, to the effect, “...At times XXXX has let his frustrations be heard over the radio which has been directed toward his peers or a dispatcher. I have explained to him that although he may be right in his frustration, the message that he gives makes people upset. XXXX has too worked on this area and has improved himself. I would like

to see him utilize me this year to talk about annoyances and frustrations are not ill received.” was intended to address XXXX’s communications with co-workers, which were a source of aggravation and annoyance for some. Accordingly, Galles was encouraging XXXX to use him as a filter to improve his communications with other members of the team.

Others of XXXX’s supervisors or managers testified that they, indeed, encouraged him to use them as resources to help him get along with his co-workers. This encouragement could not, however, be construed to allow XXXX to engage in debate with supervisors about their orders. Their further testimony was that they never encouraged (or allowed) XXXX to engage in confrontational arguments with his supervisors. For XXXX to urge otherwise would be entirely inconsistent with the PIP that had been in place from about December, 2007 to October, 2009.

4. Termination is reasonable in view of Mr. XXXX’s record and the two previous Last Chance Warnings issued to him.

The Employer presented substantial and un rebutted evidence of XXXX’s record of unacceptable workplace behaviors. The Employer’s witnesses readily acknowledged that he was a capable canine handler. But their testimony also portrayed a vivid and compelling image of a recalcitrant individual with an incurable propensity to break rules and rebel against authority.

The Employer acknowledges that XXXX’s conduct on March 15, standing alone, would not be sufficient to sustain a discharge. However, in view of his historical disciplinary record, his argument with Sgt. Galles on March 15, 2011 was the “last straw” and the decision to discharge is fully supported by that cumulative record.

5. The secretly recorded conversations with Sheriff Dahl do not lessen the Grievant’s guilt or mitigate the penalty.

In the hearing, the Union entered into the record two recordings of conversations that Sheriff Todd Dahl had with Mr. XXXX and with Chad Turcote, an Investigator with the Department. Both recordings were made without Dahl’s knowledge, but with the knowledge of both Mr. XXXX and Investigator Turcote.

If, by entering those recordings into the record, the Union was attempting to show that Sheriff Dahl harbored personal animus toward XXXX, that effort was to no avail. The record testimony also established that some 6-8 members of the Department’s management and supervisory group were

asked for their input and/or opinions relative to the potential termination of Deputy XXXX. All but one of that group recommended or supported a decision to discharge him. The lone vote or opinion in opposition to discharge came from an individual; who said he couldn't do that because Deputy XXXX had once saved his life.

If the Union's intent, re: the recordings, was to show that people were permitted to argue about managerial decisions, the evidence misses the point. In his recorded remarks to XXXX, Sheriff Dahl expressed pronounced rejection because he felt that a life-long friend was placing his political allegiance behind an opposing candidate in the upcoming election for Sheriff. Dahl's remarks concerned the personal relationship he shared with Mr. XXXX; the conversation could by no means be construed as an invitation to rebel against managerial authority.

The Turcote-Dahl recording is likewise of no moment to this case. Mr. Turcote has previously had his day before a State Administrative Law Panel. That panel issued an opinion critical of Sheriff Dahl's personal behavior and actions, but concluded that he had not violated the law. If Mr. Turcote wished to contest or complain about his transfer from the Investigation Division back to the Patrol Division in about March, 2011, he had the contractual grievance procedure at his full disposal. Raising this issue in this hearing was an attempt to smear Sheriff Dahl with evidence that has no probative value to the Issue in this case.

Conclusion: For all of the foregoing reasons, the Employer respectfully urges that the Union's grievance be denied and that Mr. XXXX's discharge be sustained.

THE UNION:

Article 14.5 of the applicable collective bargaining agreement in this matter clearly requires that Mr. XXXX's grievance must be sustained, unless the Employer's termination decision is supported by Just Cause. Both the Union and the Employer acknowledge that no where in the agreement is the term "Just Cause" actually defined.

However, the Union notes that this Arbitrator has, in previous discipline cases, has utilized the seven-element test for just cause as articulated by Arbitrator Carroll Daugherty in *Enterprise Wire Co.*, 46 LA 359 (Daugherty, 1966). See also, Keven & Smith, *Just Cause: The Seven Tests*, 2d ed. (1992). The seven elements or tests are;

1. *Notice: Did the employer give the employee forewarning or foreknowledge of the possible or probable consequences of the employee's disciplinary conduct?*
2. *Reasonable rule and order: Was the employer's rule reasonably related to business efficiency and the performance the employer might reasonably expect from the employee?*
3. *Investigation: Did the employer, before administering the discipline to the employee, make an effort to discover whether the employee did, in fact, violate or disobey a rule or order of management?*
4. *Fair investigation: Was the employer's investigation conducted fairly and objectively?*
5. *Proof: At the investigation, did the decision-maker obtain substantial evidence or proof that the employee was guilty as charged?*
6. *Equal treatment: Has the employer applied the rules, orders and penalties evenhandedly and without discrimination to its employees?*
7. *Penalty: Was the degree of discipline administered by the employer in a particular case reasonably related to (a) the seriousness of the employee's proven offense and (b) the record of the employee in his service with the employer?*

In addition, this Arbitrator has endorsed the standards set forth more recently by Professors Robert I. Abrams and Dennis R. Nolan in their law review article, "Toward a Theory of 'Just Cause' in Employee Discipline Cases" (Duke Law Journal, 594, 611-612) (1985):

- A. *Just cause for discipline exists only when an employee has failed to meet his obligations under the fundamental understanding of the employment relationship. The employee's general obligation is to provide satisfactory work. Satisfactory work has four components:*
 1. *Regular attendance.*
 2. *Obedience to reasonable work rules.*
 3. *Reasonable quality and quantity of work.*
 4. *Avoidance of conduct, either at or away from work, which would interfere with the employer's ability to carry on the business effectively.*
- B. *For there to be just cause, the discipline must further one or more of management's three legitimate interests:*
 1. *Rehabilitation of a potentially satisfactory employee.*
 2. *Deterrence of similar conduct, either by the discipline employee or other employees.*
 3. *Protection of the employer's ability to operate the business successfully.*
- C. *The concept of just cause includes certain employee protections that reflect the union's interests in guaranteeing "fairness" in disciplinary situations:*
 1. *The employee is entitled to "industrial due process". This includes:*

- a. *actual or constructive notice of expected standards of conduct and penalties for wrongful conduct.*
 - b. *A decision based on facts, determined after an investigation that provides the employee with an opportunity to state his case, with union assistance if he desires it.*
 - c. *The imposition of discipline in gradually increasing degrees, except in cases involving the most extreme breaches of the Fundamental Understanding. In particular, discharge may be imposed only when less severe penalties will not protect legitimate management interests, for one of the following reasons: (1) the employee's past record shows that the unsatisfactory conduct will continue, (2) the most stringent form of discipline is needed to protect the system of work rules, or (3) continued employment would inevitably interfere with the successful operation of the business. And*
 - d. *Proof by management that just cause exists.*
2. *The employee is entitled to "industrial equal protection", which requires like treatment of like cases.*
 3. *The employee is entitled to "individualized treatment". Distinctive facts in the employee's record or regarding the reason for discipline must be given appropriate weight.*

The Union believes that applying these elements and standards to the record evidence, this Arbitrator will conclude that the Employer has clearly not demonstrated Just Cause to terminate Mr. XXXX.

- A. Mr. XXXX did not commit the policy violations as alleged by the Employer.

"Any reason the employer intends to rely on for a discharge must either be stated in writing or communicated to the employee...The discharge...must stand or fall upon the reason given at the time of discharge." *Discipline and Discharge in Arbitration*, Brand, Ed. (1998) at 43. In her Notice of Termination Meeting to XXXX, dated April 7, 2011, Chief Deputy Backdahl stated that he had violated Sections 6-3 and 6-5 of the Co-Worker Relations Policy. She went on to state the findings of fact upon which these alleged violations were based:

"You acknowledge receipt in March of email communications from Lt. Lasher and Sgt. Galles directing you to remove a file cabinet from the squad room. You failed to comply with these directives and instead tried to justify why the directives should not apply to you and why you should not be required to comply."

These findings are simply not accurate. Lt. Lasher acknowledged that he had sent out numerous emails to the Department staff with instructions for the remodeling of the Squad Room in the Law

Enforcement Center (LEC) and that these emails were, by his own admission, "...*hard to keep track of*". Of further note are Lasher's March 9 email and his March 16 MDT message to XXXX, both of which clearly indicated that XXXX had until Friday, March 18 to remove his personal file cabinet from the LEC. However, Sgt. Galles subsequently directed XXXX to remove the file cabinet by Wednesday, March 16. The record evidence is clear that XXXX, in fact, completed the transfer of the files from his personal file cabinet to his work station files and removed the personal file cabinet from the LEC by the evening of March 16; thereby fully complying with the directives of both Lasher and Galles.

The Employer contends that the fact that XXXX moved his file cabinet from the hallway back into the Squad Room on March 13 demonstrated his intent to keep the cabinet in the new squad room permanently and in clear disregard to Lasher's and Galles' directives. However, the facts of the situation fail to support that assumption by the Employer. Mr. XXXX knew that the file cabinet had to ultimately be removed from the LEC, by the directed deadline and he fully complied.

The relevant sections of the Co-Worker Relations Policy also provide that an employee "*shall not publicly criticize or make derogatory comments on orders received from a supervisor*" and shall not "*ridicule a supervisor, or his/her orders, whether in or out of the supervisor's presence.*" The Employer may contend that Mr. XXXX violated these provisions in the way he responded when Sgt. Galles told him on March 15 that Lt. Lasher was upset with his moving his file cabinet back into the squad room. XXXX did express his frustration at that time and, again, over lunch that day with Galles; because he had found the cabinet useful in performing his work duties and would have preferred to keep it at the office. However, there is no evidence that he said anything that could reasonably be characterized as "public" criticism, derogatory comments or ridicule. Moreover, Department management had repeatedly, over the course of the past several years, encouraged and directed him to "vent to his immediate supervisor when he was frustrated or annoyed with his co-workers. Accordingly, XXXX had routinely "vented" to Galles and other immediate supervisors on numerous other occasions regarding frustrations and annoyances concerning both peers and Department leadership and had never been investigated or disciplined for those statements. The Employer has failed to make any meaningful distinction between these previous "venting" situations and the conversations between XXXX and Galles on March 15. In short, nothing that XXXX said to Sgt. Galles on March 15 violated the Employer's Co-Worker Relations policy.

The Union notes that Sheriff Dahl, in his Notice of Termination letter of April 13, states that he found XXXX's behavior in the Loudermill Hearing the previous day to have been "*confrontational and defensive, leaving little evidence of a commitment on your part to comply with the expectations of this office or the directives of administration.*" Dahl obviously failed to recognize that the purpose of the hearing was to give the employee "...*an opportunity to present his side of the story*" before a decision was made to take away his job – to which he had a constitutionally protected property interest. A review of XXXX's recorded statements and remarks in the hearing; which are part of the record, clearly establishes that he was calm, civil, never raised his voice and never used any inappropriate language. Apparently, Sheriff Dahl expected XXXX to come into the hearing, "fall on his sword" and fully admit to all of the allegations made against him. Mr. XXXX used the hearing in the manner intended, to tell his side of the story and to advocate his position.

In view of the foregoing, the Employer has failed to meet its duty and burden of affording Mr. XXXX "industrial due process" sufficient to establish that just cause exists in this matter.

B. The penalty of termination is too severe.

As noted above, by both Daugherty and Abrams and Nolan, just cause requires that the degree of discipline imposed by the employer be reasonably related to the employee's proven offense.

The Union is certainly not conceding that Mr. XXXX violated any Employer policy in his handling of the file cabinet situation. However, even assuming, *arguendo*, that he did commit the alleged violations – the Union submits that these are far from termination-level offenses. It should be noted that in his email to Sgt. Galles on March 14, regarding the fact that he had noted that XXXX had moved his file cabinet back into the squad room, Lt. Lasher commented that XXXX should be given a Feedback Form – a non-disciplinary notice.

Termination is akin to "capital punishment" in the workplace. For Mr. XXXX his employment as a Sheriff's Deputy involves his economic livelihood, reputation, employee rights and future employment opportunities. Where an employee is terminated for, what are non-existent or, at best, petty offenses, an arbitrator has both the authority and the duty to remedy the situation by reinstating the employee and this Arbitrator should do so in this case.

C. Mr. XXXX's termination cannot be justified by progressive discipline.

Perhaps realizing that the file cabinet incident, standing alone, would not justify a termination decision, the Employer relies heavily on progressive discipline. In her Notice of Termination Meeting of April 7, Chief Deputy Backdahl stated that XXXX had engaged in “a pattern of disregard for authority and respectful workplace conduct” and “a repetitious cycle that fails to demonstrate any sustained improvement”. Additionally, there was extensive Employer testimony and evidence proved in the hearing with respect to Mr. XXXX’s employment history, including previous discipline and Performance Improvement Plans (PIP)³. However, a detailed examination of the record shows that these prior events were too remote in time and the more recent improvements in his work performance too significant and well-documented, for the termination decision to be sustained on the basis of XXXX’s prior disciplinary record.

The record shows that before the file cabinet incident, Mr. XXXX hadn’t incurred any formal disciplinary action since his 30-day suspension without pay, in March, 2008. In that situation he placed a sheet of paper containing a vulgar message on a citizen’s truck that he felt was parked improperly. XXXX readily acknowledged his wrongdoing, personally attempted to apologize to the citizen, accepted and served the 30 day suspension and did not file a grievance. In extending his PIP, in March, 2009, to December 31, 2009, Chief Deputy Backdahl explicitly stated that the purpose in extending the PIP was to rehabilitate Mr. XXXX and bring about the required improvements in his work performance and attitude; “*You have the aptitude and drive to achieve success and we are committed to continue the coaching and review process to help you achieve your goals.*” On October 5, 2009, Sheriff Dahl informed XXXX that he was ending the PIP some three months early because XXXX had “*successfully met all the requirements of the...plan.*” And that his “*improved performance is appreciated by me and our entire administrative team.*” A few months later, Mr. XXXX received his Annual Performance Appraisal for calendar year 2009 from Sgt. Paulson, which stated that, as a direct result of the PIP, he had “*made a 180 degree turn in the right direction.*” Paulson went on to praise XXXX as “*very much a team player in 2009*” who “*communicates in a positive manner and accepts communications in a positive manner.*” A year later, at the conclusion of calendar year 2010, XXXX received a similar Annual Performance Appraisal from his then supervisor, Sgt. Galles; stating that he “*works well with others*”.

Mr. XXXX, as indicated, acknowledges that he did commit some errors in judgment earlier in his career with the Department, but, since early

³ The Parties agree that, per the applicable labor agreement, Performance Improvement Plans (PIP) are non-disciplinary in nature.

2008 has worked diligently to correct and avoid repeating such errors. As recognized by his supervisors over the course of the past several years he has demonstrated dramatic and sustained improvements in his attitude and work performance and that he has successfully rehabilitated himself.

The Employer also points to language in the March, 2008 disciplinary notice where it states, "*this is your last chance*" and similar language in Chief Deputy Backdahl's letter extending XXXX's PIP in March of 2009 to the effect, "...*this is in effect your final chance*". It should be noted that these were warnings that the Employer made unilaterally – the parties have stipulated that Mr. XXXX has neither been offered nor entered into any Last Chance Agreement. Accordingly, there is no such agreement to be considered or assessed in this matter, relative to the Issue of just cause.

Finally, the record shows that following his termination, Mr. XXXX was hired as a part-time Police Officer by the Cuyuga Police Department and, according to the testimony of the Cuyuga Police Chief, has performed extremely well in that position. This belies Sheriff Dahl's statement in the Notice of termination to the effect that Mr. XXXX had lost his "*ability to demonstrate acceptable performance on a regular and reliable basis.*"

D. Mr. XXXX's termination was motivated by political retaliation.

The Union respectfully requests that this Arbitrator consider that the Department's handling of the XXXX filing cabinet situation was actually a pretext for personal political retaliation by Sheriff Dahl. The record shows that in about June 2010 Sheriff Dahl, who was running for re-election in November, apparently heard that Mr. XXXX was backing someone else for Sheriff in the election. Dahl asked XXXX to call him. In the course of their subsequent phone conversation, Dahl became very angry, when XXXX refused to indicate who he was personally supporting in the upcoming election. In his anger, Dahl questioned XXXX's loyalty to him, after all he had done for him. Dahl demanded that XXXX state his support for Dahl's re-election. When XXXX refused to do that, Dahl talked about how deeply hurt and disappointed he was with XXXX and how he wouldn't forget. Dahl made frequent references to the fact that XXXX worked for him and repeatedly reminded him that he (Dahl) wouldn't forget this.

Later that same summer, Dahl had a similar face-to-face conversation with Department Investigator Chad Turcote. Dahl also told Turcote that he was disloyal, could not be trusted and that he faced job-related consequences for supporting Dahl's opponent in the pending election.

Turcote subsequently filed a formal complaint against Dahl with the State of Minnesota. A panel of Administrative Law Judges, who heard the case, subsequently, albeit reluctantly, found that Dahl had not violated the law; but did find his personal behavior in the matter “contemptible”.

Interestingly, in about March 2011, Turcote was removed from his Investigator position and transferred back to Patrol Division.

In a related situation, another Department Investigator, D. J. Downie, published a comment in the Brainerd Dispatch on October 24, 2010, in the Open Forum section:

“Dahl and the union, the deputies union complained they went to the Sheriff in 2007 with complaints about the management. This was the same management who his opponent put in place, and kept his opponent from sinking while sheriff. Who do you want as your sheriff, the union or Sheriff Dahl. D. J. Downie, Crow Wing County sheriff’s investigator.”

This apparent violation of County policy and/or Minnesota statute was brought to the attention of County officials, but there is no indication that any subsequent action was taken, even though the County Administrator had warned all County employees that such conduct could result in suspension or termination.

In view of the foregoing and based on Sheriff Dahl’s pattern of overt political favoritism toward his employees, the record strongly indicates that Dahl’s decision to terminate Mr. XXXX was motivated, at least in part, by political considerations by Dahl.

Conclusion: The termination of XX XXXX’s employment was entirely without just cause and, therefore, violated the terms of the applicable Collective Bargaining Agreement. The termination should be reversed and Mr. XXXX should be reinstated and made whole in all respects.

ANALYSIS, DISCUSSION AND FINDINGS

As an Arbitrator, I am keenly aware that discharge cases are among the most important situations that I am called upon to determine. Discharge decisions have significant psychological, economic and legal effects on all parties involved.

This labor agreement conditions Discipline/Discharge upon “Just Cause” and like most labor agreements, contains no other statements, standards or definitions as to the precise meaning of that term.

Despite of the absence of a definition of “just cause” within the labor agreement itself, one would expect that - given the myriad of discipline and discharge cases that labor arbitrators have had to deal with over the course of many decades - the labor arbitrators themselves would have certainly reached a clear consensus as to the meaning of those terms. Wrong! The situation was aptly explained by one seasoned, veteran labor arbitrator who observed that neither he nor his esteemed colleagues have ever been able to reach agreement on an universally accepted definition of the term “just cause”, but he noted that he and every other labor arbitrator could readily recognize the presence or absence of “just cause” in any particular case.

As the Union has indicated above, in the absence of a cogent definition of “Just Cause” in the applicable labor agreement, I typically look to Daugherty’s Seven Tests of Just Cause and the standards set forth by Abrams and Nolan in their article, “*Toward a Theory of Just Cause in Employee Discipline Cases*”. I, personally, find both of these perspectives to be useful tools in organizing and analyzing the facts and evidence that come to the fore in discipline/discharge cases. However, like many arbitrators, I find that it isn’t helpful or appropriate to apply either of those tools in a rigid and overly mechanical manner; in that neither of them fully recognizes and allows for the weighing of the myriad of factors and nuances that are involved in a typical discipline situation.

In this and other discipline cases, the employer is initially required to present sufficient evidence to establish a *prima facie* case⁴ in support of its assertion that the disciplinary action was, indeed, for “just cause”. However, to ultimately prevail, the Employer’s *prima facie* case must be able to withstand all attempts at rebuttal or challenge and clearly establish by a preponderance of the evidence⁵ that it remains valid.

Turning now to this matter, after reviewing and considering the record testimony and evidence as a whole, several preliminary considerations and findings are appropriate;

1. The Employer has properly adopted and promulgated certain policies and work rules to employees outlining the conduct and performance standards expected of them in connection with their employment, including Policy 100.6 governing Co-Worker Relations. On its face, the policy is reasonably related to the Employer’s desire to maintain proper and respectful relations between and among employees, supervisors and managers and to insure the good order and efficiency of the organization. Accordingly, I so find.

⁴ In common law, *prima facie* denotes evidence that – unless rebutted – is sufficient to prove a particular proposition or fact.

⁵ The preponderance of evidence standard requires sufficient evidence to establish that it is more likely than not that the facts a party seeks to prove are true. This is a less severe evidentiary standard than the “beyond a reasonable doubt” standard applied to criminal matters.

2. Mr. XXXX, at all times material herein, was aware of and familiar with the Employer's Policy 100.6 *Co-Worker Relations* and the referenced subsections 6-3 and 6-5 and was concurrently aware that violation of the policy could result in disciplinary action. Accordingly, I so find.
3. The Employer did conduct a investigation with respect to Lt. Lasher's Complaint of March 22, 2011 against Deputy XXXX with respect to what is known as the "file cabinet" situation. I specifically noted that Lt. David Larson was assigned to conduct the formal investigation and that he personally interviewed and took a statement from Sgt, Galles on March 24, 2011 and a similar interview and statement from Mr. XXXX (with Union representation present) on April 5, 2011.
I note that there is no record of Lt. Larson having interviewed and taken a statement from Lt. Dennis Lasher, the Complainant, and one of the principals directly involved in the underlying events. However, I concede that, at best, this is a "nice to know"-type item and should not be construed as a critical deficiency. Accordingly, I find that the Employer did conduct an adequate, fair and objective investigation, before determining what, if any action, should be taken.
4. With some reservation, at this point, I acknowledge that, in its evidentiary presentation, the Employer has made a *prima facie* case that Mr. XXXX arguably violated Policy 100.6, as alleged. However, the Union is obviously challenging this.
5. Based on the record evidence, it does not appear that Mr. XXXX was afforded equal treatment, relative to other employees, with respect to the file cabinet situation. This Item will be discussed more fully below.
6. Penalty. Obviously, this item is one of the core issues in this grievance Dispute and is being challenged by the Union and will be more fully discussed below.

Now let's turn to and consider the Union's specific arguments and challenges, set forth in the Summary, above;

1. Mr. XXXX did not commit the policy violations as alleged by the Employer. The Union's major point here is that in her specific statement of charges to Mr. XXXX on April 7, 2011, Chief Deputy Backdahl stated that he "failed" to comply with directives from Lt. Lasher and Sgt. Galles to remove his file cabinet from the squad room. The Union notes that, in fact, XXXX never failed or refused to remove his file cabinet and, in fact, fully complied with the deadlines imposed. Upon review, I find merit in the Union's argument.
 - A. A detailed examination and review of the entire "file cabinet" chronology reveals the following facts:
As Lt. Lasher conceded in his email to XXXX on February 21, 2011, he was having a hard time keeping track of his emails concerning his plans for the remodeled squad room and that no decision had

yet been reached on whether the personal filing cabinets would be going back in the Squad Room.

On March 2, Lasher , by email, informs the deputies that due to space constraints their personal filing cabinets would not be going back into the new squad room and that they should remove their personal filing cabinets “...*from the building ASAP*”. One can reasonably presume that upon receipt of this message, the deputies immediately get ready to start reorganizing and transferring the contents from their personal filing cabinets to new locations.

On March 3, Lasher sends an email to all the deputies confirming that the squad room renovation is complete and they can start moving into their new work stations. He confirms that the personal file cabinets won't be coming back into the new squad room, but that efforts are being made to provide additional filing space for those needing it.

On March 9, Lasher sends another email to the clerical staff and deputies advising them that any items in the hallways must either be moved to their work stations or removed from the Law Enforcement Center building by Friday, March 18. Lasher also stated that, “*Deputies – if you drew one of the work stations that has only one big drawer, you can take one drawer of one of the file cabinets by the kitchen area. You may have to wait until deputies remove their items from those cabinets, which also needs to be done by March 18th*”.

Lt. Lasher, as head of the Patrol Division, was well aware that Mr. XXXX was on vacation from about February 23 and wasn't scheduled to return to work until March 15. He was also aware, that Mr. XXXX happened to come into the office, on his own time, on March 13 and was only then aware of Lasher's emails of March 2, 3 and 9. Unlike his colleagues, who had been working since about March 2nd or 3rd on the transfer of their belongings and files into their new work stations, on March 13 XXXX was facing the same deadline of March 18.

When Lt. Lasher discovered on Monday, March 14, that XXXX had moved his personal file cabinet back into the squad room; one wonders what, exactly, caused him become upset and to send the message to Sgt. Galles that XXXX had to remove his file cabinet from the squad room not by Friday, March 18, but by March 15, as soon as he reported back to work.

In view of the foregoing and totality of circumstances, I find that Lt. Lasher failed to clearly communicate to XXXX, or other deputies, his expectations regarding exact timelines and manner in which they were to accomplish the transfer of their belongings and files into their new work stations in the squad room. Additionally, Lasher failed to recognize and account for the fact that XXXX had been on vacation from at least March 3 through March 15; when the other deputies had the opportunity to begin moving their belongings and files. Instead, on March 14 and through Sgt. Galles on March 15, Lasher imposed a stricter deadline on XXXX. I also note that Lt. Lasher did engage in a conversation with XXXX during the training session on March 15, but, for some reason, chose not to mention his concern about the filing cabinet situation. I am reasonably certain, based on the totality of the circumstances, that if he had done so, the rest of the scenario would never have unfolded.

By his confusing, arbitrary and capricious communications and conduct, Lasher, needlessly turned a simple “housekeeping” situation into a “cause celebre”. Accordingly, I find that Lt. Lasher’s actions, conduct and/or lack thereof constituted at least disparate, if not also discriminatory, treatment of Mr. XXXX, with respect to the file cabinet situation.

I further find that by disparately imposing the stricter deadline upon Mr. XXXX for movement of his belongings and files from his personal file cabinet to his work station, Lasher, by specific intent or otherwise, unduly, unreasonably and provocatively stressed XXXX, causing him to “vent” his frustration to Galles on March 15.

- B. Turning to the Employer’s contention that Mr. XXXX violated Policy 100.6 *et. seq.*, I note and find as follows:
1. A review of XXXX’s previous PIP finds that Department management required him to bring “...*matters of disagreement directly to your supervisor, a member of the Sheriff’s management team or your duly elected bargaining representative*”. The apparent purpose of this requirement was to keep XXXX from publicly and openly expressing such disagreements, thereby causing disruptions among potentially wider audiences within the Department.
 2. I also note that in XXXX’s Annual Performance Appraisal for 2010, Sgt. Galles mentions the fact that XXXX should not address his frustrations to his co-workers, but should utilize him (Galles) to talk about his “*annoyances and frustrations*” so that messages are not ill-received [by others?].

3. Based upon 1 and 2, above, and in light of XXXX's testimony to the effect that the Employer had not previously expressed any objection or concern with him privately "venting" his disagreements, annoyances and/or frustrations to his immediate supervisor, I find that his comments to Galles on March 15 about his frustrations with the Lasher and the file cabinet situation are insufficient to establish or constitute a violation of Employer Policy 100.6, as alleged. See also my comment and finding in the last paragraph of A, above.
2. The Union argues that the penalty of Termination/Discharge is too severe. The Union specifically argues that even if one fully acknowledges all the Employer's alleged facts directly surrounding the file cabinet situation; there would be insufficient grounds to support a termination decision.

I note that Employer, in its brief, does concede that 'standing alone' the facts of the file cabinet situation would not justify the termination, but the Employer argues that when XXXX's entire work performance and disciplinary record is considered, then termination is, indeed, appropriate and justified. With respect to the contention that XXXX's previous disciplinary record is relevant to the discharge decision; the Union points to the following:

- A. XXXX's last and most recent formal disciplinary action occurred in about March, 2007. At that time he received a 30-day disciplinary suspension for placing the sheet of paper containing a vulgar cartoon and language on a citizen's vehicle. The Union also notes that the subsequent PIP that was imposed on XXXX from 2007 until October 5, 2009, under the terms of the applicable labor agreement is not to be construed as disciplinary action, only as counseling or coaching.
- B. Since the lifting of the PIP in October, 2009, XXXX has consistently met and, in most cases, exceeded the Employer's work performance expectations and standards, as set forth in his Performance Appraisals for 2009 and 2010. As stated by his supervisor, Sgt. Paulson, in the 2009 Appraisal, "XXXX, *through this plan, has made a 180 degree turn in the right direction*".
- C. Given the totality of the circumstances surrounding the "file cabinet" situation, there is nothing to support the Employer's contention that XXXX's behavior and actions in that situation that demonstrate any kind of continuing, repetitious problem.

In consideration of the foregoing, I find merit in the Union's argument and further find that in light of XXXX's obvious marked change in attitude and performance over the course of the past 2-3 years, his past disciplinary record is unrelated to his behavior – even assuming *arguendo* that it somehow violated Policy 100.6 - in the file cabinet situation.

3. The Union argues that Mr. XXXX's termination was motivated by political retaliation by Sheriff Dahl. In support of this argument, the Union entered into the record copies of two (2) separate recorded conversations. I have reviewed both recordings. In summary;

The first conversation took place in about June, 2010 and involved a phone conversation between Sheriff Dahl and Deputy XXXX. Dahl was then campaigning for re-election to another term as Sheriff in the November election. Dahl called XXXX because he had apparently obtained some evidence that XXXX's wife was supporting Dahl's election opponent. In the ensuing conversation; in which Dahl's conduct can best be described as "*disgusting*", Dahl essentially demands that XXXX clearly state his political allegiance to Dahl. When XXXX refuses to make any such political admission or declaration, Dahl proceeds to accuse him of "*disloyalty*" and says he won't be able to trust him and that will affect his employment status because, without loyalty and trust, Dahl just didn't know what he was going to do with respect to XXXX's position as an employee in the Department. The entire conversation went on for approximately 25 minutes with Dahl doing virtually all the talking and stating over and over again his personal "*hurt*" and disappointment over XXXX's disloyalty and lack of allegiance.

The second recording contains the content of a meeting that took place in Dahl's office in early August, 2010 and lasted for about 44 minutes. Dahl summoned Chad Turcote, a Deputy-Investigator with the Department, into his office because he had discovered that Turcote had posted a recent photo of his children, on his personal FaceBook page, depicting them standing by a campaign sign for Dahl's election opponent and allegedly giving it a "thumb's up" gesture. As in his previous conversation with XXXX, Dahl accused Turcote of being disloyal, stated that he could no longer trust him and that the situation raised serious questions about Turcote's future employment with the Department. During the conversation, XXXX's name was mentioned as another disloyal employee.

Turcote subsequently filed a formal complaint against Dahl with the State of Minnesota. A formal hearing subsequently took place before a panel of three State Administrative Law Judges (ALJs). The panel ultimately concluded that while they were technically unable to find that Dahl's statements and conduct violated the law, they nonetheless found his statements to Turcote, in the August, 2010 meeting, to be "*contemptible*". Having reviewed the recording myself, I would add the word "*disgusting*".

I note that the record shows no evidence that Sheriff Dahl has subsequently retracted, corrected or otherwise remedied his previous statements to XXXX or Turcote with respect to their alleged lack of political allegiance, credibility and disloyalty and how such apparent treason would have a potentially

adverse effect on their employment with the him and the Department. Accordingly, I shall presume an adverse inference that Sheriff Dahl has, at all times material herein, maintained those stated attitudes and intentions and that he specifically bears ongoing personal animus and hostility toward Mr. XXXX because he refused to pledge his political allegiance to Dahl, when demanded.

With that adverse inference, I find that it is reasonable to conclude that Dahl's personal animus and hostility toward XXXX did impact, by some measure, on his personal ability to make a fair and unbiased decision with respect to any considered disciplinary action involving XXXX.

I'm sure that as it reads the above statement, the Employer will be tempted to point out that Sheriff Dahl consulted with 6-8 members of his management team, before making the final decision to terminate XXXX. According to the testimony, of some 6-8 managers/supervisors who participated in that consultation, only one disagreed with a decision to terminate. Frankly, I find that consultation and its results to be irrelevant, for a couple of reasons, 1) the individuals involved were all functioning as Dahl's management agents, representatives and minions and 2) I have no doubt that they, like XXXX and Turcote, were well aware of their boss's views and attitudes toward those who are "disloyal".

In consideration of the record testimony and evidence as a whole and my specific findings as set forth above, I specifically find that the Employer has failed to meet its burden of proof and establish by a preponderance of the evidence that it had Just Cause to terminate the employment of Deputy XX XXXX on April 13, 2011.

As an arbitrator, I don't lightly overturn employer disciplinary actions; nor is it my practice to inject myself and my personal standards of fairness or justice into an employer's disciplinary decision. Where the employer has obviously made an honest and good faith effort to afford the employee full industrial due process and consideration and where the employer has clearly exercised its discretion in a fair, reasoned and non-discriminatory manner, I will typically defer to that decision, if it otherwise fully comports with the contractual requirements. On the other hand, I will not hesitate to fully intervene where the evidence clearly establishes that the employer has acted in an arbitrary and capricious manner or has otherwise acted in bad faith and abused its discretion, in violation of its obligations under the contract.

CONCLUSION

In view of my analysis, discussion and findings above, I conclude that by terminating Deputy XXXX on April 13, 2011, in the absence of Just Cause, the Employer specifically violated Article 14.5 of the applicable labor agreement.

DECISION

Having concluded that the Employer violated the applicable labor agreement, as alleged by the Union in its Grievance of April 18, 2011, that grievance is hereby sustained.

THE REMEDY (Revised)⁶

The Employer **SHALL** take the following affirmative steps and actions to remedy its contractual violation:

- Within seven (7) business days of this Decision, offer, in writing, Mr. XXXX immediate, full and complete reinstatement to his former position as a Patrol Deputy and as a K9 Handler.⁷
- Reinstatement Mr. XXXX with no loss of seniority or any other rights and benefits to which he is entitled by virtue of his ongoing service with the Employer.
- Make Mr. XXXX whole for any loss of wages or benefits which he has suffered as a result of his improper termination.⁸
- The Employer's actions did not result in a disciplinary action within the meaning of the *Minnesota Government Data Practices Act* (MGDPA), MN Stat. § 13, and the Employer will treat all references to Mr. XXXX's termination on April 13, 2011 as "*private personnel data*" within the meaning of the MGDPA.

⁶ The Remedy has been amended, as of 4/19/12, from the original, per post-Decision stipulations by the Parties.

⁷ In his capacity as a K9 Handler, Mr. XXXX's former canine partner, "Oakley", will be immediately placed back in his custody or, if "Oakley" is no longer available for duty with XXXX, a new canine partner will be immediately furnished to him.

⁸ Any income earned from interim employment, together with any amounts of unemployment compensation received since his termination, shall be deducted from the gross amount of back pay due.

Dated at Minneapolis, Minnesota, this 2nd day of April, 2012.

Frank E. Kapsch, Jr.
Arbitrator

Note: I shall retain jurisdiction in this matter for a period of 45 calendar days from the issuance of this Decision to address any questions or problems related thereto.