

**THE MATTER OF ARBITRATION BETWEEN**

<hr/>		)	
<b>SAINT PAUL POLICE FEDERATION,</b>		)	
		)	
	<b>Union,</b>	)	
<b>and</b>		)	<b>HEU SUSPENSION</b>
		)	<b>GRIEVANCE</b>
<b>CITY OF SAINT PAUL,</b>		)	
		)	
	<b>Employer.</b>	)	
<hr/>		)	

Arbitrator:	Stephen F. Befort
Hearing Date:	September 14, 2012
Post-hearing briefs received:	September 28, 2012
Date of Decision:	October 12, 2012

**APPEARANCES**

For the Union:	Christopher Wachtler
For the Employer:	Tracey Blee

**INTRODUCTION**

The St. Paul Police Federation (Union), as the exclusive representative of a unit of police officers, brings this grievance claiming that the City of St. Paul (City) violated the parties' collective bargaining agreement by suspending Officer Amanda Heu without pay for one day without just cause. The Employer maintains that the suspension was supported by just cause due to the grievant's negligent conduct that contributed to a motor vehicle accident. The grievance

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

## **ISSUES**

Did the Employer have just cause to suspend the grievant for one day? If not, what is the appropriate remedy?

## **RELEVANT CONTRACT LANGUAGE**

### **ARTICLE 28 - DISCIPLINE**

28.1 The Employer may discipline employees in any of the forms listed below:

- Oral reprimand
- Written reprimand
- Suspension
- Demotion
- Discharge

The Employer will discipline employees for just cause only and in accordance with the concept of progressive discipline.

## **FACTUAL BACKGROUND**

The grievant, Amanda Heu, has worked for the City of St. Paul since 2000, initially as a community liaison officer, and since 2004 as a police officer. She currently works as a patrol officer assigned to a canine partner.

The disciplinary incident at issue took place during the early morning hours of Saturday, January 7, 2012. At approximately 2:00 a.m. while on patrol duty, Officer Heu responded to a radio call for assistance at a burglary. Officer Heu activated her lights and siren and drove in a westerly direction on St. Anthony Avenue which is a one-way frontage road adjacent to Interstate 94 in St. Paul, Minnesota. Officer Heu shortly came to an intersection with Western

Avenue, an arterial street spanning Interstate 94 and controlled by stop signs in all three directions. Officer Heu's squad car proceeded into the intersection without stopping and collided with a Saturn driven by a female driver who was driving in a northerly direction. The squad car was totaled.

A number of the facts concerning this accident are uncontroverted. First, the Western Avenue overpass has a high concrete wall which makes visibility difficult for drivers going westbound on St. Anthony and northbound on Western. Second, the driver of the Saturn had a blood alcohol level of .20, which is two and one-half times the legal limit. Finally, the driver of the Saturn also was operating her vehicle without headlights and her radio was on extremely loud.

Sergeant Greg Gravesen, an expert in accident reconstruction, conducted an investigation of the accident. He determined that Officer Heu's squad car was travelling at a speed of 43 miles per hour at the time of the collision. Sergeant Gravesen also determined that the driver of the Saturn was traveling at a speed of 11 miles per hour at the time of the collision. Sergeant Gravesen testified that the latter's speed was consistent with someone who was accelerating from a stop, but that he had no way of knowing whether the driver actually had stopped at the intersection's stop sign.

Officer Heu provided an incident report shortly after the accident in which she stated that she slowed down as she neared the intersection with Western Avenue, looked in both directions, but did not observe any oncoming traffic. She stated that she then sped up as she entered the intersection and estimated that she was driving at a speed of 45-50 miles per hour at the time of the impact.

At the arbitration hearing, Officer Heu testified that she thought she was traveling at a speed of 35-40 miles per hour on St. Anthony Avenue prior to approaching the intersection. She testified that she slowed down to a speed of approximately 25-30 miles per hour as she neared the intersection and then sped up once she saw no oncoming traffic on Western Avenue.

Officer Heu's accident was subject to three levels of disciplinary review. The first level was before the Department's Accident Review Board (ARB). The ARB consists of seven members, composed primarily of department leaders and a representative of the Union. Police Department General Order 640.07 provides that the ARB is to review the circumstances to determine whether an accident was preventable and to make a recommendation as to the appropriate level of discipline. The policy defines a preventable accident as “a crash in which the employee failed to do everything reasonable to prevent the crash.”

Relevant statutory provisions also inform the ARB's deliberations. In this regard, Minn. Stat. §169.17, while creating an exception to speed limits for emergency vehicles, states that the “provision does not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of persons using the street . . . .” Minn. Stat. §169.03 also applies to emergency vehicles, and allows drivers responding to an emergency call to proceed through red lights and stop signs without coming to a complete stop. However, the statute makes clear that the driver “shall slow down as necessary for safety” and “proceed cautiously past such red or stop sign.”

By a vote of 6-1, the ARB found that Officer Heu's accident was preventable in nature. The ARB then considered the appropriate level of discipline. Pursuant to Police Department General Order 640.07, an employee's first preventable accident within a three-year period normally calls for an oral reprimand, the second a written reprimand, and the third a suspension.

Officer Heu had another accident in 2007 that was found to be preventable, but this accident was not within the three-year window established by the City's policy. The General Order also provides that the City may deviate from this presumed level of discipline "based on circumstances surrounding the accident." The ARB voted 5-2 to enhance the level of discipline to a one-day suspension.

The next two levels of disciplinary review were provided by Assistant Chief of Operations Robert Thomasser and by Chief of Police Thomas Smith, respectively. Both concluded that Officer Heu was driving too fast under the circumstances and that she did not adequately "clear" the St. Anthony - Western intersection. Chief Smith, in particular, testified that Officer Heu should have "inched" into the intersection due to the well known blind spot caused by the Western Avenue wall. Both managers concurred with the ARB's conclusions that the accident was preventable and that Officer Heu should be subject to a one-day suspension.

Chief Smith issued a disciplinary letter on December 12, 2012, imposing a one-day suspension on Officer Heu. Chief Smith summarized his conclusions in the following paragraph:

There are numerous issues surrounding this incident. The excessive speed upon entering an intersection of which you did not have control is careless at best. While you did have your emergency lights and siren activated, you must have control of the intersection before proceeding through the stop sign. You did not use due care when entering the intersection. While I understand you were responding to an in-progress call, ultimately you did not arrive to assist the caller or other officers. In fact, other officers has [sic] to assist you instead. This is clearly an incident of poor judgment.

At the arbitration hearing, the Union submitted evidence purportedly showing that Chief Smith had become concerned with the number of recent costly accidents and had instructed the ARB chair and senior command staff to come up with ideas to reduce the number of accidents and injuries. Chief Smith, on the other hand, testified that he did not direct the ARB chair to make an example of Officer Heu in order to further this objective, and ARB member

Commander Mary Nash testified that the ARB made its recommendation strictly on the basis of the circumstances of this particular accident.

Both parties additionally presented evidence with respect to comparable incidents. The Union points to the fact that Parking Enforcement Officer Cha received a one-day suspension after having two prior accidents within the preceding three-year period and that Officer McDonald received a one-day suspension despite failing to operate his lights and siren prior to a collision and having a prior preventable accident one year earlier. The City introduced evidence concerning a two-day suspension issued to Officer Christianson for a collision in which he did not activate his lights and siren. The City notes that this discipline resulted even though the other driver was under the influence of alcohol, did not have a valid driver's license, and drove through a stop sign at a high rate of speed.

### **POSITIONS OF THE PARTIES**

#### **City**

The City contends that it had just cause to suspend Officer Heu for her conduct relating to the collision that occurred on January 7, 2012. The City claims that the crash was preventable in that Officer Heu did not take all reasonable precautions to avoid the accident. In particular, the City maintains that Officer Heu was driving at an excessive rate of speed and failed properly to ensure that the St. Anthony - Western intersection was clear before entering. The City also argues that a one-day suspension is an appropriate sanction for this negligent conduct. The City asserts that the grievant failed to drive her vehicle with due regard for the safety of others and that a suspension is not out of line with the discipline imposed for comparable incidents.

## **Union**

The Union argues that the City's one-day suspension of Officer Heu is not supported by just cause. The Union initially contends that the January 7 accident was not preventable. The Union maintains that Officer Heu acted with due care and that the driver of the other vehicle caused the accident by driving while under the influence of alcohol, without headlights activated, and by failing to stop at the St. Anthony - Western intersection. The Union argues, in the alternative, that even if the accident was preventable, a one-day suspension is too harsh of a sanction. In this regard, the Union points out that the City's own policy normally calls for an oral reprimand in this instance and that the circumstances do not warrant an upward deviation from that norm. The Union further asserts that the heightened penalty was adopted by the City, not in response to the actual circumstances of the accident, but to send a deterrent message to other employees.

## **DISCUSSION AND OPINION**

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

## **The Alleged Misconduct**

The misconduct alleged by the City is that Officer Heu failed to exercise due care to avoid a preventable accident on January 7, 2012. More particularly, the City claims that Officer Heu was driving at an excessive rate of speed and failed to make sure that she had clear access to the St. Anthony - Western intersection. The Union, on the other hand, contends that Officer Heu exercised due care by activating her lights and siren, slowing down prior to reaching the intersection, and by looking for any oncoming traffic. The Union argues, accordingly, that the accident was not preventable due to the negligent conduct of the other driver who was driving impaired and without any headlights.

While it is clear that the driver of the Saturn was operating her vehicle in a negligent manner, this fact does not relieve Officer Heu of the responsibility for driving her squad car in a manner that does not endanger members of the public. The evidence in the record supports the finding that Officer Heu was driving at a speed that was too fast for the circumstances, particularly in light of the known obstructed view posed by the St. Anthony - Western intersection. Sergeant Gravesen determine that Officer Heu was driving at a speed of 43 miles per hour at the point of impact. Officer Heu's incident report estimated her speed at 45 to 50 miles per hour. Although Officer Heu testified at the hearing that she slowed to a speed of 25-30 miles per hour while approaching the intersection, it is likely that her actual speed was somewhat higher in order to account for the 43 miles per hour achieved just a few seconds later. On balance, the facts support Chief Smith's assessment that Officer Heu's excessive speed impeded her ability to ensure that the intersection was clear before entering.

## **The Appropriate Remedy**

The City's policy as established by General Order 640.07 is that an employee's first preventable accident within a three-year period normally calls for an oral reprimand. At the arbitration hearing, the City offered testimony to the effect that few, if any, other police officers have totaled two vehicles during their tenure with the City. While that may be true, the City's policy only calls for an assessment of those accidents occurring within the past three years. Accordingly, the fact of the 2007 accident is not a legitimate basis for enhancing the discipline for the January 7, 2012 accident.

Once the 2007 accident is removed from the equation, there really are no aggravating circumstances that warrant a heightened sanction in the circumstances of this case. While Officer Heu may have been driving somewhat too fast in order to respond to the burglary call, it is clear that the principal cause of the collision was the negligence of the other driver. The driver of the Saturn was drunk. She was operating her vehicle without headlights. The driver's radio was on so loud that she could not hear Officer Heu's siren. And she likely did not stop for the stop sign at the St. Anthony - Western intersection.

The comparator incidents cited by the parties also do not support a heightened sanction. Unlike Officer Christianson, Officer Heu was driving with her lights and siren activated. And unlike Officers Cha and McDonald, Officer Heu did not have any prior accidents during the measuring three-year period.

In the end, the City has not shown a sufficient reason to deviate from its established policy of responding to an initial preventable accident with an oral reprimand. Accordingly, the City's sanction of Officer Heu should be reduced to reflect that norm.

## **AWARD**

The grievance is sustained in part and denied in part. The City's assessment that the January 7, 2012 accident was preventable is sustained. The sanction, however, is reduced from a one-day suspension to an oral reprimand. The City is directed to make the grievant whole for any lost pay and benefits and to modify the grievant's personnel file to reflect this determination.

Dated: October 12, 2012

---

Stephen F. Befort  
Arbitrator