

Arbitration

**In The Matter of Arbitration
Between:**

**Three Rivers Park District, Plymouth, Minnesota,
Employer
and
Law Enforcement Labor Services, Saint Paul, Minnesota,
Union**

**BMS Case No. 12-PA-0355
(Officer Brent Wiebusch)**

**Carol Berg O'Toole
Arbitrator**

Representatives:

For the Employer:

**Susan E. Ellingstad (#2433460)
Lockridge Grindal Nauen L.L.P.
100 Washington Avenue South, Suite 2200
Minneapolis, Minnesota 55401**

For the Union:

**Isaac Kaufman (#032601X)
Law Enforcement Labor Services, Inc.
327 York Avenue
Saint Paul, Minnesota 55130**

Witnesses

For the Employer:

**Gerald Gnerre, Police Officer, City of Chaplin
Leslie Johans, Police Officer, City of Champlin
Ross Gullickson, Lieutenant, Three Rivers Park District
Hugo McPhee, Chief of Police, Three Rivers Park District**

For the Union:

Mary Houts, Citizen

Jack Arnold, Business Agent, Law Enforcement Labor Services, Inc.

Mark Gehan, Attorney for Grievant

Dave Schwarze (by phone), Former Chief of Police, City of Champlin

Kevin Hinrichs, Business Agent, Law Enforcement Labor Services, Inc.

Heide Speak, Sergeant Three Rivers Park District

Robert L. Penney, Sergeant, City of Champlin

Preliminary Statement

The hearing in the above matter commenced on November 29, 2012, at approximately 9:30 A.M. and continued on to November 30, 2012, at the offices of Three Rivers Part District, Administrative Center, 3000 Xenium Lane North, Plymouth, Minnesota. The parties involved are Three Rivers Park District (Employer) and Law Enforcement Labor Services, Inc. (Union). The parties presented opening statements, oral testimony, oral argument, and exhibits. All exhibits offered were stipulated to be accepted as exhibits by both parties except that Employer's Exhibit 11 was objected to by the Union. All exhibits were received with the arbitrator's admonition that, depending on the exhibit, some would be given less weight. Post hearing briefs were filed by both parties. The arbitrator closed the hearing upon receipt of both briefs on December 21, 2012.

Issue Presented

The parties agreed on the issues as follows:

Issue One: Did Three Rivers Park District violate the Collective Bargaining Agreement by demoting Brent Wiebusch without just cause?

Issue Two: If so, what is the appropriate remedy?

Contractual and Statutory Jurisdiction

The Union is the certified bargaining representative for “All Park Ranger Supervisors employed by Three Rivers Park District, Plymouth, Minnesota, who are public employees within the meaning of Minn. Stat. 179A.03, subd. 14.” Union Exhibit 1. The Employer and the Union are signatories to a collective bargaining agreement (Agreement), Union Exhibit 1, covering the period from January 1, 2009, to December 31, 2011 which provides in Article 21 that if the grievance is not resolved in Step 2 of the grievance procedure, the grievance may be referred to arbitration. The parties could not agree on a resolution through the grievance procedure; thus, the dispute is properly before the arbitrator. Neither party raised timeliness or other procedural issues.

Employer’s Opening Argument

Prior to the actual opening statement the Employer objected to arbitrating whether the Employer followed the Peace Officers Discipline Procedure Act in conducting the investigation. The Union states that, instead of interviews, sworn statements should have been taken. The Employer stated that these topics were beyond the scope of arbitration and that testimony as to the meaning of a law was inappropriate. The Employer argued that the remedy for the violation of the Peace Officers Discipline Procedure Act is actual damages and that the Employer’s procedure where sworn statements are not taken have been addressed favorably in two prior arbitrations. The Employer stated that the issue is whether there is just cause for the

demotion of a recently promoted sergeant. The Employer stated that the Grievant left his patrol area on May 29, 2011, and contacted a Champlin police officer inquiring how to obtain and purchase steroids, and, later, contacted the same Champlin officer again for information on an internet location to obtain steroids. The Champlin officer reported the contact to his chief who contacted the Employer's chief. The Employer stated that this conduct violated the Employer's policies and procedures and constituted the "just cause" the Agreement requires for a demotion.

Union's Opening Argument

The Union stated that the Grievant, who is a veteran, was promoted to a sergeant in 2011 and then notified of his demotion to a patrol officer on June 30, 2011. The Union stated that the Grievant was contacted on approximately May 20, 2011, by a friend, Mary Houts, who asked about the legality of steroids. The Grievant stated that Houts was concerned about the legality of steroids her college hockey-playing son was interested in. The Grievant contacted the Champlin officer to obtain an answer her question, not to obtain steroids. The reporting to the chief and the escalation of the issue was due to the Champlin officer thinking he was being set up and "bad blood" between certain Champlin officers.

Employer's Case in Chief

Witnesses: Gerald Gnerre

The first witness for the Employee was Officer Gerald Gnerre. He testified that he will have been a police officer for ten years on December 2, 2012. He knows the Grievant as a friend of Sergeant Penny from Champlin and first met the Grievant in 2003 or 2004. Gnerre testified that he was a pro-wrestler in 1977 when there was a

totally different culture. He testified that he took steroids from 1980 to 1990 and was very open about this with the department. He stated that he had not used any illegal steroids since 1990 and had not obtained them for anyone. Gnerre was a coach for Chaplin High School from 2004-2006

Gnerre described the first incident that is the subject of this arbitration on Memorial Weekend, May 29, 2011. He was in the eastern part of the city looking for a runaway when his partner, Officer Leslie Johans, called him and said, "Get over here." He detected concern in his partner's voice and knew "something was not right".

Gnerre drove to his partner's location. The Grievant walked over to Gnerre's squad car. Gnerre testified that he did recognize the Grievant's face, but could not remember his name. The Grievant did not introduce himself. Johans called Gnerre at that point and asked if he needed some help. He told her he did not. Without any preliminaries, Grievant asked Gnerre where he could get some steroids. Gnerre asked the Grievant who they were for and the Grievant replied that they were for a 23 year old friend who was trying to get into pro-hockey. Gnerre said he was "uncomfortable with the conversation" and tried to change the subject. Gnerre testified that the Grievant said, "They tell me they get it on line." Gnerre testified that a side conversation occurred at this point with the Grievant indicating that he took steroids when he played for St. Cloud State. Gnerre said that the Grievant talked as though he had some knowledge. The Grievant brought up the name of Jerry Jones. The Grievant described Jones as the "biggest dealer" and having been arrested for tax evasion. Gnerre told the Grievant that a doctor was "the only way to get legal steroids." The conversation ended.

Later, when Gnerre saw his partner, Johans, she asked him, "Who is this guy?" Gnerre told her what his name was after looking him up on the query log. Gnerre reported the incident to Sergeant Tim Mead.

Gnerre's next contact with the Grievant was on June 14, 2011, when the Grievant called to ask if Gnerre had found the web site. Employer's Exhibit 16. Gnerre said he had not.

Gnerre was asked if he knew the difference between asking for information on steroids and asking for a steroid purchase. Gnerre replied that he did and there was "no doubt in his mind" that the Grievant was asking to purchase steroids. Gnerre stated that he knew the Grievant was a friend of Penny's and that Penny and he (Gnerre) have had issues. Gnerre testified that he had nothing to gain by testifying at this arbitration.

On cross examination Gnerre was asked if he was a member of Law Enforcement Labor Service, Inc. and he said he was. Gnerre was asked if the Grievant interfered with finding the runaway kid and whether he said, "I can't talk to you now...I need to look for the kid." He indicated "no" to both questions. When asked about his acquaintance with the Grievant, he explained that he thought he knew he was the guy who lost his wife to cancer. Gnerre wrote the Grievant a check when that happened to help him out. When asked, Gnerre said, as the Union representative and with five others, he filed a complaint against Penny in 2010. When asked when he reported the conversation with the Grievant on May 29, 2011, he replied that he told Sergeant Mead at the end of his shift. He testified that he "never thought I was being set up." Gnerre was contacted by Lt. Gullickson a few days after the incident and interviewed about it. Sgt. Mead gave him the Garrity warning. The interview was neither recorded nor

transcribed. He was contacted a few weeks later and interviewed about the second contact with Grievant. Gnerre said that the second conversation with the Grievant lasted about two minutes. He was asked, "Did you ever find the web site?" Gnerre said "no".

Witness: Leslie Johans

Johans testified she has been a police officer for Champlin since 2005 and was a community service officer for five years before that. Her partner is Gnerre. She was working on Sunday night, May 29, 2011, when the incident with Grievant occurred. She said they were busy and she was on a runaway call. The runaway had just left home. She testified that, when she responded to the runaway call, a blacked out car with no lights approached her vehicle in the vicinity of Gnerre's car. She thought it was odd, given that, during her time with Champlin, she has experienced very few joint calls, "less than five calls with Three Rivers", and that the car was a few miles from the park. She testified that when the calls overlap, Hennepin County Dispatch will coordinate and she "can also see on the computer". When asked if the Grievant was on the runaway call, she said he wasn't. She testified that she was north and down the street from the runaway's home and went to the call first. When she had contact with the Grievant, he did not introduce himself and simply stated, "Where is Gerry?" Johans told him that she could get Gnerre there by calling him on the city radio. She thought that the Grievant was "very rude" and "abrasive". Johans does not remember any further conversation with the Grievant. The Grievant walked to Gnerre's car and talked to him. Johans indicated she thought Gnerre seemed bothered by the conversation. She was not within hearing

distance of the conversation between Grievant and Gnerre. She later asked Gnerre, "Are you OK?" He told her about the conversation and said, "He asked me for steroids" and that he was really bothered by the conversation.

In the cross examination Johans was asked if she was a member of Law Enforcement Labor Services, Inc. and she indicated she was. She testified that she was given a Garrity Warning and then interviewed by Gullickson. When asked if the report of the interview was accurate, she answered that it was. She also indicated that she thought the Grievant's request for steroids was a set-up, but had no further evidence.

Witness: Ross Gullickson

Gullickson testified that he has sixteen years in law enforcement and has been with Three Rivers Park District since June, 2007, when he started as a lieutenant. Gullickson testified that he became the supervisor of the Grievant when he became a sergeant in December, 2010. Gullickson graduated from Northwestern University and has done Masters work at the University of St. Thomas. He has done additional training from various institutions including the Bureau of Criminal Apprehension and Law Enforcement Labor Services.

Gullickson testified that the allegations against the Grievant surfaced on June 3, 2011, when the Champlin police chief called Chief McPhee. On June 4, 2011, Chaplin Deputy Chief Ty Schmidt called with more information. Schmidt reiterated what Gullickson already knew about Gnerre. McPhee asked Gullickson to conduct an investigation. Gullickson interviewed three Chaplin police department individuals (Gnerre, Johans, and Mead), the Grievant and one additional witnesses (Houts) .

Gullickson testified that he did not do recorded statements and did not consider the interviews formal statements that the Peace Officers Discipline Act deals with. He also did not tape record or stenographically record the interviews. Employer and Union Exhibit 2. Gullickson testified that the Grievant was represented by counsel who asked if the interview was a formal statement and Gullickson indicated it was not. Gullickson testified that he did not deviate from his normal practice: he took notes on each interview; went back and compiled the notes into a report; and, discarded the notes once the report was finalized. Union Exhibit 2.

Gullickson testified that the Grievant admitted to him that he asked about legal steroids.

Gullickson was asked if the Grievant's behavior was compatible with behavior expected of a sergeant. He said "no". He explained that: 1) the behavior was carried out during a call; 2) that it was not how to obtain services for a citizen; 3) the path Grievant selected—to ask Gnerre-- was wrought with various interpretations; 4) that the actions "speak so loudly I cannot hear what you're saying"; and, 5) that the Grievant ought to have known better.

During cross examination, Gullickson testified that this was an investigation of misconduct and that the Employer's policy was applied. He stated that no written or signed complaint had been filed regarding the incident with Grievant. He said that he didn't know that Houts was in the car when she called him back and gave the interview. Gullickson testified that the decision to demote was based on just cause. Gullickson was asked about a parking lot conversation with Grievant where he was supposed to have stated that it wasn't his decision to demote. Gullickson said that it wasn't his

decision to demote. Gullickson testified that Gnerre said the Grievant admitted using steroids while at St. Cloud State. Gullickson stated that he found no evidence that Gnerre was “set up”.

Witness: Hugo McPhee

McPhee has been the Chief of Police and Director of Public Safety for nine years. He testified that the Employer received a call from the Chief of Police at Chaplin who said that Three Rivers Park District had a “serious issue” regarding one of his sergeants and that one of his officers came forward to say a Three Rivers Park District officer had asked about purchasing steroids. After he received the call, he had a brief discussion with Gullickson on legality or illegality of steroids

McPhee described the process for the investigation. Gullickson was the fact finder with the report presented to the Chief. McPfee checked with Chris Delisi, Director of Human Resources, before he made the decision. His discussion with Delisi included the following: the appropriateness of the penalty of demotion with a recently appointed sergeant; the lack of judgment exhibited by Grievant; the higher standard for sergeants who are to be models; and, the portrayal of a professional standard. Employer Exhibit 14 . McPhee instructed Gullickson to call the Champlin Deputy Chief.

McPhee testified that he then went to Minnesota Statutes and determined that there were three schedules of controlled substances, there were no legal steroids and that anabolic steroids were illegal on their face. McPhee said this research took him approximately five minutes. Union Exhibit 13.

McPhee discussed Employer’s Exhibit 13, Public Safety Procedures Manual, sections 2.0300, Unacceptable Performance, and 2.1300, Conduct. He also pointed to

the Grievant meeting with another officer at “that time of night”, how Grievant was required to notify dispatch when “on break”, and how he considered Grievant’s behavior as “personal business”. He noted the provision, “Sworn staff working a field assignment shall notify Dispatch when they are unavailable for calls or on break/lunch.” Employer Exhibit 13, section 2.0400. McPhee delineated section 2.1300 as the most serious section violated by Grievant. The provision states, “Members shall maintain a level of conduct in their affairs which is in keeping with the highest standards of the law enforcement profession.” Employer Exhibit 13.

McPhee highlighted Employer Exhibit 14, Principle 4, Appendix P of the Peace Officer Standards, Minnesota Statutes 626.8457, “Peace officers shall not, whether on or off duty, exhibit any conduct which discredits themselves or their agency, or otherwise impairs their ability or that of other officers or the agency to provide law enforcement services to the community.” McPhee testified that he thought the Agreement’s standard for discipline, “just cause” had been met. McPhee stated his opinion on the Grievant’s assertion that he was simply seeking information and not procurement of steroids: “I don’t believe that is the case.”

During cross-examination McPhee testified that he had the ultimate decision to demote the Grievant and considered the Grievant’s entire employment history in making the decision. Union Exhibit 2, 8, 9, and 10. Prior to this demotion, the Grievant had “nothing serious” on his record.

Union's Case in Chief

Witness: Mary Houts

The Union presented its case by first calling Houts, a friend of Grievant's. She was a good friend of Grievant's late wife. Grievant's daughter played basketball at the school where Houts' husband coached. She testified that when she has a question about something, she asks a person. Houts says she doesn't have time to do research. She testified that she asked about steroids, what was legal, what was illegal and never had any intent to buy steroids. She indicated she called Grievant seven times at the number 612-723-7592, Union Exhibit 14, and that when she reached Grievant, he told her he didn't know the answer but would find out. Houts testified that she had a follow-up conversation where she asked Grievant if he found out anything. He hadn't.

She testified that she received a voice mail from Gullickson asking for an interview. Houts testified that she called Gullickson back when she was driving in her car. It is unclear whether Gullickson knew Houts was driving. Houts said she heard kids crying in the background during the interview. She indicated that she received a summary of the interview. Houts said, "What does this have to do with anything? To be honest, the whole thing is ridiculous." Houts said the whole thing was so long ago that she doesn't have a "specific recollection of what I said." She indicated that she had no intent to buy and that you "can obtain illegal steroids at GNC". Houts testified that her son wanted to take something legal. She stated she had done no research on the web regarding steroids. Houts testified that she was advising her son and that her son "never has, never will" take steroids. She indicated, in looking at Union Exhibit 4, the Gullickson report to Chief McPhee, that she felt bad, that one is not allowed to ask a

police officer a question. She never used the words that Gullickson used in his report,,
“On the up and up”.

Witness: Mark Gehan

Gehan is an attorney with Collins, Buckley and Sauntry in St. Paul. Gehan testified that Collins represented Law Enforcement Labor Services, Inc. as they did not have in-house counsel. Gehan said he represented the Grievant in June, 2011. Gehan testified that he himself did not record the interview that Gullickson did with the Grievant. Gehan considered the interview a formal statement. He testified that it was not the intent of the statute to do it as Gullickson had done. When Gehan was asked if the Employer had asked Grievant to sign the statement, he said, “No.”

Witness: Jack Arnold

Arnold testified that he is employed by Law Enforcement Labor Services, Inc. and has been a business agent for eighteen years. He has worked with bargaining groups for thirty years. He described his role at Step 2 of the grievance procedure. Union Exhibit 3. He indicated that the Employer’s representative at Step 2, Dahlof, said that she wasn’t that concerned about steroid allegations but that the Grievant was out of his jurisdiction.

Witness: Dave Schwarzr

Schwarzr appeared by phone. He testified that he was the former chief at the Champlin Police Department. He is currently retired. He testified that although he was at Champlin during the 1990’s where Gnerre said he was open about his steroid use, he was not aware of it.

Witness: Kevin Hinrichs

Hinrichs testified that he is and has been a business agent with Law Enforcement Labor Services, Inc. for two and one-half years and was a patrol officer, sergeant, and commander for twenty-eight years with the Bloomington Police Department. He has had special training in conducting internal investigations. He testified that, in his opinion, it is not in keeping with the statute to conduct investigations without a formal statement. He also stated that he thought it was extremely difficult to have an independent recollection of quotes absent some type of recording. Hinrichs stated that employees have to have a process in place that is fair, that statements taken over the phone were not preferable, that there is a higher probability for misunderstanding with phone conversations, and that Houts' interview while driving was not preferable. Hinrichs testified that every department he has dealt with does a recording.

Witness: Heidi Speak

Speak testified that she was a police sergeant for Three Rivers Park District for five and one-half years. Previous to her current employment she was a Minnesota State Trooper for thirteen years. She testified as to the performance appraisals she completed on Grievant as his supervisor. She stated that Grievant was rated as exceeding expectations. Speak testified that the Grievant was very well liked by his subordinates and that she knew of no steroid use or illegal drug use or untruthfulness by the Grievant. Speak thought that if the Grievant was reinstated, he would serve Three Rivers Park District well. Regarding Grievant's driving to Champlin to speak to Gnerre, Speak said it was "out of the ordinary". On cross examination, she indicated

that supervisors are held to a higher standard than other officers and she thought Gullickson was truthful.

Witness: Robert Penny

Penny testified that he has worked for twenty-two years for the City of Chaplin, including eight years as Sergeant. When the Grievant worked for the park and recreation department at the City of Champlin, they became friends. Penny indicated when asked about steroids use, that the Grievant “doesn’t even drink”, is “truthful” and “honest”. Penny testified that he now directly supervises Gnerre and that they have a “fairly rocky relationship”.

Witness: Brent Wiebusch (Grievant)

The Grievant testified that he has worked for the Employer since 2008, first as a public service officer, then a police officer, and, finally, as a sergeant from December 20, 2010, until he was demoted. The Grievant worked as a conservation officer and then for seven years as a state trooper. The Grievant testified that he has never used steroids and never attempted to procure steroids.

The Grievant testified that his daughter Kelsie introduced his family to the Houts family through Province Academy, where Mr. Houts coached the sport Kelsie played. Mrs. Houts became friends with the Grievant’s wife and helped him with the kids after Grievant’s wife died.

The Grievant testified that Houts said she wanted to buy or obtain steroids and that GNC was selling products now that football players were suspended over for taking. He said that Houts approached him at other times including when she asked about alcohol. The Grievant said he sometimes called other officers about the

questions, e.g., Tom Fiedler regarding domestic violence. When steroids came up, the first person the Grievant thought about was Gnerre.

The Grievant said that on May 29, 2011, he was the only sergeant on duty and went outside the park district for a break. He never told dispatch he was going out of service for a break. The Grievant testified that he heard Gnerre on the radio going to a runaway call about three miles away from where he was. He drove to the address he heard on the radio with his parking lights on and asked Johans how she was doing. He described his demeanor and the interaction as “friendly”.

The Grievant said that his conversation with Gnerre lasted 15-20 minutes. The conversation started with Grievant’s question, “What did you know about steroids?” The Grievant stated that Gnerre told him the history of steroids and said that he had “dabbled in them all”. Gnerre brought up the death of Jerry Jones. Gnerre said that all steroids were legal until sometime in the 1990’s, but that all are illegal now unless one has a prescription from a doctor. Gnerre mentioned a friend that lives in Oklahoma with a related web site. The Grievant described Gnerre’s demeanor as “excitable” and “passionate”. The Grievant said that it was not true that he said to Gnerre, “Any connection to get steroids?”

Houts called him a week or two after the May 29, 2011, incident. The Grievant identified Union Exhibit 11 which indicated in a five day period there were eight calls from Houts’ phone to the Grievant’s phone. The Grievant said there was nothing unusual about this frequency. Houts asked the Grievant if he had any information about the steroids so he called Gnerre. The Grievant asked Gnerre if he got the web site and Gnerre indicated he had never checked and then hung up. Shortly after that call,

Gullickson asked to meet with him. The Grievant was placed on administrative leave. The interview was conducted at a later date with Gehan present. He also met with McPhee.

During cross examination Grievant stated that Gnerre said, "All steroids are illegal without a doctor's prescription. When asked if he told that to Houts, he said "No". When asked about Johans' testimony, the Grievant said, "She is not telling the truth." The Grievant said that Gnerre was also not telling the truth and that he had no discussion with him about the web site. The Grievant described Gnerre as "excitable", "crazy", "passionate about topic", and "not dangerous"

Witness: Hugo McPhee (second time)

McPhee was brought back for additional testimony. He described the organizational structure including the Human Resources Director, DeLisi, and the Associate Superintendent, Dahlof. McPhee pointed to Grievant's violation of the Public Safety Procedures Manual, section 2.1300, "Conduct, Employer's Exhibit 13 as being the most serious. McPhee said Grievant exhibited "tremendous bad judgment", when he "went about this in the way he did...a series of bad judgments" McPhee said, "this is not quality leadership." McPhee testified that he believed that Grievant 's behavior was to "obtain or purchase steroids" and that there were significant disparities between what the Grievant said and what Gullickson said.

Discussion

Just Cause The issues in dispute are referenced in the Agreement . Union Exhibit 17.1 "The EMPLOYER shall have the right to impose disciplinary action on employees for just cause." Among the disciplinary actions available to the Employer is

demotion, “Disciplinary actions by the EMPLOYER shall include only the following... Demotion,...” Union Exhibit 1, 17.2.

Arbitrator Carroll Daugherty in *Enterprise Wire Co.*, 46 LA 359 (1966) outlined the requisites of “just cause”. I find that the Employer has fulfilled those obligations. The Grievant was well trained on the requirements of his new job. The performance expected of a sergeant was reasonable and, incidently, considered so by the other jurisdiction involved. The Grievant had a full and fair opportunity to tell his side of the story in a fair and objective way with many witnesses and much evidence. The Employer has not had a similar case of misconduct so there is no past or inconsistent practice. Finally, the demotion was especially appropriate to this misconduct. See below.

The inquiry is two-fold regarding Grievant’s behavior. Did the acts occur and are they of sufficient magnitude to justify the demotion. Elkouri states that, “There are two “proof” issues in the arbitration of discipline and discharge cases. The first involves proof of wrongdoing; the second, assuming that guilt of wrongdoing is established and that the arbitrator is empowered to modify penalties, concerns the question of whether the punishment assessed by management should be upheld or modified.” *How Arbitration Works* (6th Ed. BNA 2003) at 948.

There is no question as to Grievant’s whereabouts on May 29, 2011. He traveled to the runaway’s residence when he heard Gnerre was going to be on the runaway call. Grievant testified that he was on break when he conversed with Gnerre.

There is a question on whether the “break” was a violation of the Employer’s policy. Grievant also claimed and the Union argued that it is not against any policy to

take a break outside the Three Rivers Park District without notifying the dispatcher. Query whether this was really a break or termed so after the fact. There is no question on the issue of whether Employer's policy requires notifying dispatch. Employer's Exhibit 13, Neglect of duty, section 2.0400 of the Public Safety Procedures Manual says, "Sworn staff working a field assignment shall notify Dispatch when they are available for calls or on break/lunch."

The substance of the conversation between Grievant and Gnerre is at issue. Grievant claims that he did not ask about obtaining or purchasing steroids. He just asked about steroids because he himself wanted to answer a question from a citizen, Houts. Query whether answering such questions from friends is part of a sergeant's job. Houts was a good friend who helped Grievant's family before, during and after Grievant's wife's death. It is understandable that the Grievant would want to help his friend. Query whether the Grievant was under any professional obligation to answer such questions, especially if Grievant didn't know the answer.

Secondly, was Grievant's "research" to answer the question was appropriate, professional, and accurate is another question. Assuming for a moment that it was appropriate to take work time to answer Houts' questions, the Grievant would have served Houts better if he did a small amount of research on the web to check the criminal statutes or suggested she do so, instead of asking someone that "might" know. The direct approach, which Employer used, was the better approach. Houts appeared perfectly capable of doing web research and would have spent less time doing so that making numerous calls.

The Grievant showed a lack of judgment in agreeing to find the answer and in the method he selected to do so. I suspect that Houts was encouraged by such a response and kept asking global questions of all sorts of people who were not charged with being her personal researcher.

Gnerre testified that Grievant asked how to purchase steroids, not whether they were legal or not. Gnerre's actions right after the May 29, 2011, conversation with the Grievant are most telling. Gnerre reported the incident to his boss right at the end of his shift and described it as a request to buy steroids. Gnerre clearly took the conversation as a request to buy and acted accordingly. Whether or not he felt set up doesn't matter. Gnerre's actions, to make sure his boss knew what he was asked and his outrage at being asked was an effort to keep his record clear.

Also important is the reaction of the Champlin Deputy Chief and Chief. They had no hesitation in calling the Three Rivers Park District Chief. They felt Grievant's actions were out of line, as did Gnerre. The unanimity of response is notable. Grievant's actions displayed a total lack of judgment regarding what his job is, what authority is prime (the statute over the opinion of an officer), what professionalism means, what high standards are, and what conduct is required of a sergeant.

The only ones who claimed the conversations with Gnerre were not big deals were the Grievant and Houts. Their testimony is not credible. Grievant has much to lose and a ready motive to cast a favorable light on what everyone else thought was a clear error in judgment. Houts defensive testimony was hard to believe, inconsistent and sophomoric. I shudder to think of the advice she may provide college kids or the nonchalance she might display (you can buy illegal substances at health stores)

regarding the use of alcohol or drugs, including anabolic steroids. Houts tried to make this whole incident into a freedom of expression issue. This is no First Amendment issue and I suspect even with her protests, she knew it. A sergeant doesn't have the freedom to express poor judgment in his behaviors and retain his or her job.

Appropriateness of the Penalty

In regard to the appropriateness of the penalty, Elkouri states, "Court decisions recognize broad arbitral discretion to review the reasonableness of the penalty imposed by the arbitrator in relation to the wrongful conduct." *How Arbitration Works*, (6th Ed. BNA 2003) at 953, In this case, the penalty at question, is demotion. The inquiry is, are the acts sufficient to justify demotion.

The penalty, demotion, quickly delivered to a new sergeant, is the epitome of appropriateness. Because it was a swift and clear response to policy violations, especially the failure to exercise judgment, makes it likely to be a lesson well learned. If there was any doubt in Grievant's mind as to the propriety of his request to Gnerre, there isn't now. The next day response including calls from the Champlin administrators reinforced the conclusion of Gullickson and the decision of Chief McPhee. No equivocation. It was crystal clear that the judgment this new sergeant should have exercised was missing.

Due Process

The Union argues that the Grievant was denied due process because the statements were not transcribed and signed and there was no signed complaint. The Agreement, Union Exhibit 1, requires no such thing and it doesn't even mention the statute. The Agreement is clear on an arbitrator's authority. Union Exhibit 1, Article

21.51 provides that, "The arbitrator shall have no right to amend, modify, nullify, ignore, add to or subtract from the terms and conditions of this AGREEMENT." Union Exhibit 1 This arbitrator is not going to add to the grievance procedure in the Agreement requirements that investigations of misconduct be only done through sworn, transcribed statement and that any investigation must be preceded by a signed complaint. That work is bargaining table work by the parties.

The Grievant was provided all the due process required by the Agreement and more. In addition to the Union representing him, he was allowed his own counsel, Gehan. His good work record as an officer was considered by McPhee. Grievant's brief performance in the sergeant's role was a consideration in regard to the demotion penalty. Grievant could have been fired, but was not. The testimony from the Employer at the arbitration hearing indicated that Grievant may indeed be considered when future openings in the sergeant's rank occur. This grievant was provided an abundance of due process and, furthermore, may well have an opportunity to show he has learned his lesson and learned what good judgment is.

Award

I find the Grievant violated the Employer's policies and rules when he approached Gnerre about steroids and that there was ample just cause for the demotion. In addition, I find the demotion was appropriate. The grievance is denied and the demotion upheld.

Dated this 14 day of January, 2013.

Carol Berg O'Toole