

IN THE MATTER OF THE ARBITRATION BETWEEN

CITY OF ST. PAUL,)	
)	
Employer,)	ARBITRATION AWARD
)	
and)	
)	SINGLETON DISCIPLINE
)	GRIEVANCE
)	
ST. PAUL POLICE)	
FEDERATION)	BMS Case No. 07-PA-0586
)	
Union.)	
)	

Arbitrator: Stephen F. Befort

Hearing dates: July 11-13, 2007

Date post-hearing briefs received: August 29, 2007

Date of decision: September 28, 2007

APPEARANCES

For the Union: Mark W. Gehan

For the Employer: John B. McCormick

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 (Employer) violated the parties' collective bargaining agreement by imposing discipline without just cause on Officer Mamie Singleton in the form of three reprimands and two suspensions of ten days and thirty days duration, respectively. The grievance proceeded to an

arbitration hearing at which both parties had a full opportunity to present evidence through the testimony of witnesses and the introduction of exhibits.

ISSUE

Did the Employer have just cause to discipline the grievant by issuing three reprimands and two suspensions? If not, what is the proper 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

Mamie Singleton served as a St. Paul police officer from her appointment in 1977 to her resignation in 2006. In 1999, she was promoted from patrol officer to the position of sergeant. Upon her promotion, Sergeant Singleton was assigned the duties of a criminal investigator in the West District of St. Paul.

Although Sergeant Singleton's principal responsibility was to investigate cases of alleged criminal activity, she also spent a significant portion of her work time prior to 2003 participating in community outreach activities such as the Cops N Kids Book program. Then Police Chief William Finney gave his approval to Sergeant Singleton's participation in these activities even though it reduced the amount of time available to devote to criminal investigation tasks.

Supervisory evaluations of Sergeant Singleton's work performance as a patrol officer generally were positive in nature. Evaluations for the first four years following her promotion to sergeant indicated that she was "fully competent" in performing her job duties. These assessments, however, began to deteriorate in 2003.

After the City of St. Paul experienced a series of budget cuts in 2003 due to the loss of local government aid, the St. Paul Police Department eliminated six sergeant positions and five commander positions. As a result of these staffing reductions, department supervisors directed Sergeant Singleton to reduce her volunteer community activities and to concentrate her work time on investigative work.

Commander Eugene Polyak served as Sergeant Singleton's supervisor in the West District from May 2002 to November 2003. During the summer of 2003, Commander Polyak became concerned with the high volume of open cases assigned to Sergeant Singleton. In spite of being assigned primarily to the less complicated theft and property damage cases, Sergeant Singleton's open caseload (about 100 cases) was running somewhat more than double the average open caseload of other sergeant investigators (30-50 cases). This meant that many crime victims were not getting their cases resolved in a timely fashion and that supervisors assigned new cases to other investigators.

In July 2003, Commander Polyak placed Sergeant Singleton on a performance improvement plan. Commander Polyak's plan restricted Sergeant Singleton's community activities and offered her assistance in organizing and prioritizing work activities.

Senior Commander Mike Morehead took over command of the West District in November 2003. He also noted Sergeant Singleton's large open caseload and directed his

efforts at dealing with this problem. Commander Morehead testified that Sergeant Singleton had a variety of problems that hindered her investigative activities. He found that she lacked the ability to perform some basic tasks such as issuing stop and hold orders. He testified that she demonstrated poor computer skills and had difficulties in preparing investigative reports. He also testified that she continued to spend too much work time on outside activities. Most significantly, he stated that Sergeant Singleton seemed to lack “investigative judgment” in handling her cases.

In December 2004, Commander Morehead placed Sergeant Singleton on another performance improvement plan. The plan offered Sergeant Singleton additional training and required her to review promptly all cases and to close those lacking a reasonable prognosis for resolution. The plan also directed Sergeant Singleton to work only on police matters during the work day and, because of overtime pay concerns, not to work outside of regular hours without the permission of her supervisor.

Following the issuance of this plan, Sergeant Singleton requested a transfer away from Commander Morehead’s supervision. Chief Harrington, appointed in July 2004, testified that he agreed to grant the transfer because he believed that there was no chance that Commander Morehead and Sergeant Singleton could maintain a productive relationship going into the future. Chief Harrington also testified that he saw the transfer as an opportunity to provide Sergeant Singleton with a fresh start and, in furtherance of that end, he permitted Sergeant Singleton to transfer to the East District without retaining any of her existing investigative caseload.

On April 15, 2005, Commander Morehead submitted a written performance review regarding Sergeant Singleton covering two periods: July 2003 to July 2004, and

July 2004 to April 2005. With respect to the latter period, the review rated Sergeant Singleton as “needing improvement” in three areas and as “unsatisfactory” in eleven areas. The review also contained the following summary:

Sgt. Singleton is a seriously underperforming employee who is also subject to serious discipline. She needs to make major improvements in her job related performance. Chief Harrington has assembled the staff to assist Sgt. Singleton in any effort she decides to make to improve herself. She needs to take advantage of these people who are willing to help her. Sgt. Singleton needs to understand that failing to improve her work performance may have serious consequences for her career.

The Employer transferred Sergeant Singleton to the East District Investigation Unit in late January 2005 where she was assigned to the investigation of criminal damage to property cases. Once again, Commander Polyak served as her supervisor. Shortly after the transfer, Commander Polyak met with Sergeant Singleton and stressed the importance of her working toward the expectations outlined in Commander Morehead’s performance improvement plan.

Sergeant Singleton went out on medical leave shortly after her transfer to the East District. Upon her return, Commander Polyak created a new performance improvement plan for Sergeant Singleton. The plan directed Sergeant Singleton to complete training in several areas for the purpose of enabling her to manage her caseload more effectively.

In August 2005, Commander Polyak undertook a six-month review of Sergeant Singleton’s caseload and found that, in spite of her fresh start in the East District, she had far more open cases (89) than any other district investigator. The overall assessment of the review was that Sergeant Singleton’s performance “needed improvement.”

On October 31, 2005, the Employer transferred command of the East District to Acting Commander Tina McNamara. Over the course of the next several months,

Commander McNamara worked closely with Sergeant Singleton in attempting to improve Sergeant Singleton's case handling techniques. Among other things, Commander McNamara demonstrated proper methods for processing cases and set explicit goals for closing out cases. She also reduced the amount of new cases assigned to Sergeant Singleton.

Commander McNamara testified that when the two of them worked together, Sergeant Singleton processed work properly and relatively efficiently. She further testified, however, that when Sergeant Singleton was left to work independently, she would revert to old practices and her caseload would accumulate inordinately. Both Commander McNamara and Commander Polyak testified that they believed that Sergeant Singleton possessed the basic skills to perform investigative work, but that she demonstrated an unwillingness to improve her performance.

On January 17, 2006, Singleton and McNamara met with Chief Harrington to discuss concerns about Sergeant Singleton's performance. Sergeant Singleton was given a copy of Commander's Polyak's December 2005 performance review which again included an overall "needs improvement" rating. Chief Harrington told Sergeant Singleton that she would face discipline if her performance did not improve.

Following the January 17 meeting, Sergeant Singleton went out sick and later notified Commander McNamara that she would need leave through March 21, 2006. During her absence, Commander McNamara worked to clean out Sergeant Singleton's desk in order to open up a work space for a replacement investigator. During that process, Commander McNamara found more than 100 case files stored with little or no organization.

The Employer issued three reprimands to Sergeant Singleton during her absence for conduct that occurred prior to her leave. The respective dates and grounds for these reprimands are as follows:

- February 2, 2006: Reprimand for failing to productively manage assigned investigative cases.
- February 3, 2006: Reprimand for failing to compile a list of active cases awaiting lab testing as requested by Commander McNamara
- February 3, 2006: Reprimand for failing to get prior supervisory approval to participate in a computer training course.

Sergeant Singleton returned from leave earlier than expected on February 21, 2006. Since Sergeant Singleton's caseload had been distributed to other investigators during her absence, Commander McNamara reassigned fourteen of those cases to Singleton upon her return. McNamara also placed Singleton on a new performance improvement plan calling for her to close out all fourteen cases by March 3, 2006. When Sergeant Singleton succeeded in closing only four of those cases by that deadline, the Employer responded by imposed a ten-day suspension without pay on March 27, 2006.

The Employer placed Sergeant Singleton on successive performance improvement plans in two week intervals for the remainder of the spring of 2006. On June 8, 2006, the Employer issued a 30 day suspension to Sergeant Singleton for failing to meet the goals set out in these plans. Chief Harrington testified that it was his hope that the shock of a 30 day suspension would finally serve to change Sergeant Singleton's behavior.

Sergeant Singleton testified to her belief that she was a good investigator who tried hard to do a good job. She acknowledged, however, that she had problems with computer and time management skills. She also stated that she experienced several

health issues during the 2003-06 period. Sergeant Singleton testified that she resigned her employment on June 8, 2006 because she felt that her supervisors were setting her up for termination and because the stress of the situation was taking a toll on her health.

POSITIONS OF THE PARTIES

Employer:

The Employer contends that it had just cause to support the discipline that it imposed on Sergeant Singleton. The Employer points out that there is no real dispute over the fact that Sergeant Singleton's case handling performance from 2003 to 2006 was far below that of other investigators. The Employer maintains that it provided repeated opportunities for Sergeant Singleton to improve her behavior but that she consciously and insubordinately refused to bring her performance up to acceptable standards. Given these circumstances, the Employer asserts that it acted appropriately in imposing a series of progressive disciplinary steps as a further means to correct behavior.

Union:

Although the Union contests the factual predicate for two of the reprimands imposed by the Employer, it does not deny that Sergeant Singleton's case handling performance was slower than that of other investigators. The Union's principal argument, instead, is that the punishment imposed by the Employer is too severe under the circumstances. The Union first argues that Sergeant Singleton did not insubordinately refuse to perform her duties, but that she simply did not have the skills to perform adequately once the duties of her position were altered in 2003. Given the fact that Sergeant Singleton had over 25 years of prior good work experience, the Union argues that the Employer should have transferred Sergeant Singleton or demoted her to a

position for which she was qualified, rather than engage in an overly aggressive pattern of oversight and discipline that appears to be designed more to secure a separation from employment than to secure a change in performance.

DISCUSSION AND OPINION

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

A. The Alleged Misconduct

Very little of the factual predicate for the Employer's discipline of Sergeant Singleton is in dispute. Both the Employer and the Union agree that Sergeant Singleton processed significantly fewer cases than did other investigators. One of the reprimands and both suspensions are premised on this sub-par performance of investigatory tasks. With respect to these disciplinary steps, the only point of contention relates to the appropriateness of the level of discipline imposed by the Employer.

The Union, however, does dispute the alleged factual basis for two of the Employer's reprimands, both dated February 3, 2006. One of the reprimands was issued because Sergeant Singleton failed to comply with an order from Commander McNamara asking all investigators to submit a list of active cases awaiting Crime Lab testing by

January 4, 2006. During this period, the Crime Lab was working on a first degree murder trial and was unable to process lab requests in the usual course of business. Sergeant Singleton testified that she did not comply with the directive because she was busy working on a case subject to deadlines and had previously provided a list of requests to the Crime Lab.

In a paramilitary, public service organization such as a police department, an individual officer is not at liberty to ignore an order from a superior simply because she believes that it is unnecessary under the circumstances. The Employer, accordingly, has provided sufficient evidence to show that Sergeant Singleton engaged in the insubordinate behavior alleged as the basis for this reprimand.

The other February 3 reprimand was issued for Sergeant Singleton's failure to seek proper approval for attending a computer training course scheduled for January 17, 2006. Department policies require that an employee submit a training approval form in order to take a non-internal training program. Sergeant Singleton testified that she consulted with Senior Investigator Fred Gray who confirmed that she did not need to fill out a blue training permission slip for a program sponsored by the City of St. Paul. In actuality, the program was sponsored by Ramsey County rather than the City, and Sergeant Singleton should have sought permission to attend the program. Nonetheless, the record contains no evidence refuting Sergeant Singleton's claim that she made a good faith mistake with regard to the sponsor of this program. Accordingly, the Employer has not established an adequate factual basis to sustain this particular item of discipline.

Based on the above, the Employer has submitted adequate proof to establish all of its underlying conduct allegations other than the reprimand related to the computer

training session.

A. The Appropriate Remedy

The Employer maintains that it properly applied principles of progressive discipline in arriving at the disciplinary measures imposed on Sergeant Singleton. The Employer initially issued only written reprimands in February 2006 for Sergeant Singleton's failure to provide a list of Crime Lab cases and for her subpar performance in handling investigation cases. Thereafter, Commander McNamara worked closely with Sergeant Singleton to assist her case handling skills while also setting explicit expectations in bi-weekly performance improvement plans. In spite of these efforts, Sergeant's Singleton's performance did not improve. According to her supervisors, Sergeant Singleton would show improvement under direct observation but then slide in performance once left on her own. The Employer claims that this pattern demonstrates a willful failure of performance that warrants a heightened degree of discipline. Under these circumstances, the Employer claims that the subsequent 10 and 30 day suspensions constituted appropriate progressive measures designed to correct insubordinate behavior.

The Union makes two principal objections to this line of reasoning. First, the Union argues that Sergeant Singleton's case handling problems resulted more from inadequate skills than from an intentional refusal to improve performance. In support of this contention, the Union points to evidence such as Commander Morehead's testimony that Sergeant Singleton lacked "investigative judgment" and Chief Harrington's acknowledgement on cross examination that Sergeant Singleton simply was not capable of performing the job of an investigator. The Union's argument is premised on the notion that discipline is less appropriate for poor performance occasioned by negligent rather

than intentional behavior.

Second, the Union contends that the Employer should have responded to Sergeant Singleton's long tenure and good work record with a transfer or demotion, rather than with discipline seemingly designed to justify an eventual termination. The Union, in this regard, points out that Sergeant Singleton enjoyed positive evaluations and a good work record for more than 25 years prior to 2003.

On balance, the Employer was justified in engaging in a course of progressive discipline in an attempt to correct Sergeant Singleton's performance problems. Sergeant Singleton's performance significantly fell below legitimate expectations in spite of the Employer's efforts to assist her improvement. Some degree of discipline is warranted in these circumstances regardless of whether the behavior in question is negligent or intentional in nature. In this instance, I believe that both elements were present. Sergeant Singleton generally endeavored to do a good job in her police duties, but her response to the negative criticism following the reconfiguration of her job duties was to deflect responsibility for performance problems rather than to strive for improvement.

With respect to the Union's second argument, it is true that an employee's good work record is frequently cited as a mitigating factor by arbitrators in reducing disciplinary sanctions. Donna Blancero & George W. Bohlander, "Minimizing Arbitrator 'Reversals' in Discipline and Discharge Cases," 46 *Labor Law Journal* 616 (1995). That said, it is clear that an Employer is not required to create a "light duty" position for an employee who is not able to perform capably in his or her own assignment. In this instance, Chief Harrington testified credibly that there was no other sergeant position

available that posed fewer performance challenges for Sergeant Singleton than the investigator position to which she then was assigned.

The Union's alternative contention that the Employer should have considered demoting Sergeant Singleton carries greater weight. Sergeant Singleton had performed well as a patrol officer for twenty years prior to her promotion to sergeant in 1999. Given her long work record, a demotion back to a patrol position would comport with notions of just cause more appropriately than would termination. As the Employer argues, the listing of progressive discipline steps in the parties' agreement contemplates that attempts to correct behavior by means of suspensions should occur prior to the Employer's recourse to a demotion. While that makes sense both as a matter of contract construction and as a matter of policy, the duration of the suspensions imposed should be proportionate to the next step likely to be undertaken. That is, one would expect that a suspension imposed as a warning step toward discharge would be more severe than one imposed as a warning step toward an impending demotion.

Applying these principles in the instant case, the two reprimands and the ten-day suspension should be sustained. By these measures, the Employer appropriately put Sergeant Singleton on notice that her performance was not acceptable and that further deficiencies could trigger additional measures. The Employer's relatively quick jump to a subsequent 30-day suspension, however, seems more in keeping with a prelude to termination as opposed to a last step prior to demotion. Accordingly, this penalty should be reduced to the milder progressive step of a fifteen-day suspension.

AWARD

The grievances are sustained in part and denied in part. The Employer had just cause to discipline the grievant by means of two reprimands dated February 2 and February 3, 2006, respectively, as well as by a ten-day suspension dated March 27, 2006. On the other hand, the reprimand of February 3, 2006 relating to attendance at a computer training course is vacated and the 30-day suspension issued on June 8, 2006 is reduced to a 15-day suspension without pay. The Employer shall make the grievant whole for any resulting loss in pay and benefits rendered inappropriate by this award. The Employer also is directed to correct the grievant's personnel files to reflect the terms of this award.

Dated: September 28, 2007

Stephen F. Befort
Arbitrator