

**IN THE MATTER OF THE ARBITRATION BETWEEN:**

**Anoka County**

**OPINION AND AWARD**

**And**

**BMS Case No. 21POA0935**

**Law Enforcement Labor Services, Inc.**

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**Susan Gaertner, Arbitrator**

**APPEARANCES:**

**For Anoka County**

**Tony Palumbo, Anoka County Attorney**

**Bryan Frantz, Assistant Anoka County Attorney**

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**Anoka, MN 55303**

**For LELS**

**Renee Zachman**

**Jessica Mabin**

**Law Enforcement Labor Services, Inc.**

**2700 Freeway Blvd., Suite 700**

**Brooklyn Center, MN 55430**

**Date of Award: April 14, 2021**

## **JURISDICTION**

This arbitration arises pursuant to a collective bargaining agreement between Anoka County, Minnesota (“Employer” or “County”) and Law Enforcement Labor Services, Inc. (“Union”).<sup>1</sup> Robert Young (“Grievant”) is a Deputy Sheriff employed by the Anoka County Sheriff’s Office and is a Union member.

A hearing was held on February 22, 2021. Both parties acknowledge that this matter is properly before the arbitrator. Both were allowed to present witnesses, to cross-examine opposing witnesses, and to submit exhibits. Final closing briefs were filed on March 15, 2021 and the record was then closed.

## **ISSUE**

The parties agree that the issue to be determined is as follows:

*Did the Employer have just cause to issue a two-day (sixteen hour) suspension to Deputy Robert Young?*

## **FACTUAL BACKGROUND**

Grievant Robert Young has been employed by the Anoka County Sheriff’s Office since 2005. The majority of his tenure with the Sheriff’s Office has been as a patrol deputy. In addition to his duties as a patrol deputy, Deputy Young has been a part of the Sheriff’s Office SWAT team since 2010.

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<sup>1</sup> Joint Exhibit 1.

On July 6, 2020, Deputy Young received a text message/page notification of an emergency SWAT call.<sup>2</sup> Deputy Young was off duty at the time, but was available to respond. He left his home in an unmarked squad car, intending to drive to the Sheriff's Office to gather any equipment he might need for the SWAT call. Deputy Young testified that he chose to "drive emergency," turning on the lights and sirens on his unmarked squad.

In the course of his travel to the Sheriff's Office, Deputy Young was involved in an accident with another motor vehicle. That accident resulted in the discipline that is the subject of these proceedings.

The factual circumstances proceeding the collision are generally not disputed by the parties. Deputy Young testified that he was traveling northbound on Hanson Blvd, and, as noted previously, had his lights and sirens on. He also used an OptiCom to trigger the traffic lights to turn green as his vehicle approached.

When Deputy Young reached the intersection of Hanson Blvd NW and Main Street in Coon Rapids, he noted that the lights at that intersection were not turning green; thus, the traffic traveling eastbound and westbound on Main Street still had a green light. Deputy Young stopped at the intersection, specifically at the cross walk in the outer left-hand turn lane facing northbound on Hanson Blvd. Deputy Young testified that he positioned his car in that spot to maximize his visibility to other motorists and his own visibility of the intersection.

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<sup>2</sup> Sergeant Tim Day, Assistant Commander of the SWAT team, testified that SWAT notifications indicate whether the event requiring a SWAT response is of a planned, non-emergency nature, or if the event is an unplanned emergency.

After coming to a stop, Deputy Young saw that some motorists traveling westbound on Main had come to a stop despite having a green light. He waited for “two to four” cars traveling eastbound on Main to clear the intersection, before he continued northbound on Hanson Blvd. Deputy Young’s vehicle was then struck by a motorist traveling westbound on Main Street in a Chevy Equinox.

Coon Rapids City Police Officer Matthew Wilberg responded to the scene of the accident. His accident report notes that the driver of the Equinox stated that because of other traffic he could not see the squad with its emergency lights on “until it was too late.” The driver also said that his windows were rolled up and he did not hear the siren. A witness to the collision told Officer Wilberg that he did not think the driver of the Equinox would have been able to see Officer Young’s squad because of all the traffic in the Westbound left turn lanes on Main Street.<sup>3</sup>

The collision caused extensive damage to the front and rear passenger side of Deputy Young’s squad, as well as some damage to the rear quarter panel.<sup>4</sup> Anoka County Sheriff’s Deputy Shane Werneke, who was at the intersection and witnessed the accident, described the damage to Deputy Young’s vehicle as “disabling.” Deputy Werneke reported that the Equinox “had significant and disabling damage to the front and it was leaking fluid.” Both vehicles were towed from the accident scene.

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<sup>3</sup> Joint Exh. 12

<sup>4</sup> Joint Exh. 11

The accident review committee of the Anoka County Sheriff's Department determined that the accident was "preventable."<sup>5</sup> That committee, composed of members from all ranks within the Sheriff's Office, does not issue recommendations regarding any potential discipline, but does make suggestions regarding any need for further training of the officer involved.<sup>6</sup>

By a disciplinary notice dated September 23, 2020, Deputy Young was informed that he would receive a two-day suspension without pay.<sup>7</sup> Deputy Young and the Union timely filed a grievance for the suspension.<sup>8</sup>

## **APPLICABLE CONTRACT AND POLICY PROVISIONS**

### **Collective Bargaining Agreement<sup>9</sup>**

#### Article 14 – Discipline

14.(i) The employer will discipline employees for just cause only.

### **Anoka County Sheriff's Office Policies<sup>10</sup>**

Standards of Conduct. Causes For Discipline.

General Order 340.5.10 SAFETY

(f) Unsafe or improper driving habits or actions in the course of employment or appointment.

(g) Any personal action contributing to a preventable traffic collision.

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<sup>5</sup> Testimony of Chief Deputy Kevin Halweg (T. Halweg)

<sup>6</sup> Id.

<sup>7</sup> Joint Exh. 14

<sup>8</sup> Joint Exh. 15

<sup>9</sup> Joint Exh. 1

<sup>10</sup> Joint Exh. 3 and 4

## General Order 316.5 RESPONSIBILITIES OF RESPONDING DEPUTIES

Deputies shall exercise sound judgement and care with due regard for life and property when responding to an emergency call. During a response to an emergency call deputies may (Minn. Stat. § 169.03; Minn. Stat, § 169.17):

- (a) Proceed cautiously past a red or stop signal or stop sign but only after slowing down and utilizing a red light or siren as may be necessary for safe operation.
- (b) Exceed any speed limits, provided this does not endanger life or property.
- (c) Disregard regulations governing direction of movement or turning in specified directions as authorized by law.
- (d) Disregard regulations governing parking or standing when using a warning lamp.

The decision to continue an emergency call response is at the discretion of the deputy. If in the deputy's judgment, the roadway conditions or traffic congestions does not permit such a response without unreasonable risk the deputy may elect to respond to the call without use of red lights and sirens at the legal speed limit. In such an event, the deputy should immediately notify Central Communications. A deputy shall also discontinue an emergency call response when directed by a supervisor or as otherwise appropriate.

### OPINION

In this grievance, as is true generally, the employer has the burden of establishing that there was just cause for its disciplinary decision. Because the case is one of "ordinary" discipline, rather than one where the allegations would constitute a breach of law or be viewed as an act of moral turpitude, the preponderance of the evidence standard will be applied here.<sup>11</sup>

In order to demonstrate that a disciplinary decision is supported by just cause, the employer must first prove that the employee actually engaged in the misconduct or behavior that formed the basis for the discipline. If that is established, the employer must then show

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<sup>11</sup> Elkouri & Elkouri, *How Arbitration Works*, Ch. 15 , 8<sup>th</sup> Edition (2016)

that the level of discipline is fair and reasonable in light of all the relevant circumstances.<sup>12</sup>

Each of these aspects of just cause is discussed below.

## **I. The Alleged Misconduct**

The misconduct alleged by the Anoka County Sheriff's Office is that Deputy Young drove unsafely or improperly in the course of his employment, contributing to a preventable accident on July 6, 2020. His actions were deemed by the department to violate Standards of Conduct 340.5.10(f), and 340.5.10(g).

The Employer contends that Deputy Young was "wholly or substantially at fault" for the collision because he entered the intersection, noted to be one of the busiest in Coon Rapids,<sup>13</sup> against a red light. The driver of the Equinox, who had the green light, was not speeding, or distracted;<sup>14</sup> Deputy Young agreed that the driver did not see the squad until right before the collision. In the Employer's view, the collision was, at best "much or most of the fault" of Deputy Young.

The Employer acknowledges that a deputy responding to an emergency, as Deputy Young was, is allowed by state statute and Sheriff's Department policies to disobey traffic signals.<sup>15</sup> The Employer emphasizes, however, that those statutes and policies require an emergency responder to "drive with due regard for the safety" of others<sup>16</sup> and "exercise sound judgment and care with due regard for life and property."<sup>17</sup> It was Deputy Young's

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<sup>12</sup> Id.

<sup>13</sup> Testimony of Coon Rapids Police Officer Matthew Wilberg (T. Wilberg).

<sup>14</sup> J. Exh. 12

<sup>15</sup> Minn. Stat. § 169.03 Subd. 2; Anoka Sheriff's Office Policy 316.5(a)(J. Exh. 4)

<sup>16</sup> Minn. Stat. § 169.20 Subd. 5(d)

<sup>17</sup> Anoka Sheriff's Office Policy 316.5(J. Exh 4)

responsibility to get through the intersection safely, or wait until he was sure he could do so; because he did neither, according to the Employer, he violated policy and should be disciplined.

The Union contends that no violation of policy occurred. It claims that Deputy Young's actions—activating his emergency lights and sirens, slowing down and stopping at the intersection in a position he thought was visible to other motorists—showed sufficient caution and care in responding to an emergency. The Union further argues that Deputy Young did not have sufficient notice of what specific driving behavior was “good enough” to avoid running afoul of department policy.

The evidence in the record supports the Employer's conclusion that Deputy Young drove unsafely in the course of his employment, and that his driving behavior contributed to a preventable collision in violation of Sheriff's Office Policy. It was reasonable for the Employer to conclude, as Chief Deputy Halweg put it, that Deputy Young did not exercise “enough due regard for the safety of all persons,” in violation of Sheriff's Office Policy 316, which resulted in a preventable traffic collision.<sup>18</sup>

It is not reasonable to expect that policy to specify every factual circumstance or variable to be considered in evaluating whether due regard for safety has been used in an emergency response. The Anoka County Sheriff's Office had just cause to discipline Deputy Young, pursuant to the Employer's Standards of Conduct.

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<sup>18</sup> J. Exh. 15-5

## II. The Appropriate Remedy

Because the Employer has provided sufficient proof that just cause existed to discipline Deputy Young for his driving conduct on July 6, 2020, the arbitrator must now consider whether the two-day suspension imposed was appropriate in light of all the relevant circumstances. This inquiry is limited to ascertaining whether the discipline was within the bounds of reasonableness. Factors to be considered include the employee's length of service, work record, and the seriousness of the misconduct.

Deputy Young has served a relatively lengthy time with the department, over 15 years. His performance during that time has uniformly been rated as "Fully Satisfactory."<sup>19</sup> A number of his performance evaluations note that he is a valued member of the SWAT team, a position he has held for over a decade. As the Union notes, Deputy Young's personnel file contains commendations, letters of recognition, as well as a Medal of Merit relating to his performance in dealing with a dangerous suspect.<sup>20</sup>

Deputy Young's work record also includes two prior disciplinary actions. In 2013, he was issued a written reprimand for pursuing a fleeing motorcyclist who had been racing a passenger vehicle, in violation of the Employer's pursuit policy. In 2018, Deputy Young received a two-day suspension, again involving violations of the pursuit policy. Deputy Young was disciplined in that instance for pursuing a driver who failed to signal a turn and had a revoked license.

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<sup>19</sup> J. Exh 21

<sup>20</sup> J. Exh 22

Deputy Young was noted to have driven through a crowded parking lot, at a time when many citizens were present, at speeds reaching 54 miles per hour.

The Employer contends that the level of discipline imposed for the July 2020 collision is commensurate with the seriousness of the misconduct. It notes that Deputy Young's emergency driving behavior in this instance put members of the public at risk of serious injury or death, and that the accident "totaled" two vehicles. The Union argues that the discipline is too harsh, even if the preventable accident was the result of emergency driving behavior that violated department policy. The Union cites to multiple examples of Anoka County Sheriff's deputies whose on-duty driving resulted in preventable accidents but who received, in the Union's view, disparate (and more favorable) treatment from the Employer.

The Arbitrator has carefully reviewed the prior disciplinary decisions cited by the Union. The Arbitrator does not agree that these decisions demonstrate that other employees similarly-situated have been disciplined in a significantly different manner without rational explanation. The Arbitrator agrees with the Employer's contention that when all factors of each case are considered in combination, rather than any individual aspect viewed in isolation, Deputy Young's discipline was consistent with that of similarly-situated employees.

In sum, the decision of the Anoka County Sheriff's Office to impose a two-day suspension was within the bounds of reasonableness. Based on the applicable law, the facts, and exhibits before me, I see no reason to second guess that decision.

**AWARD**

The grievance is DENIED.

Dated: April 14, 2021

/s/Susan Gaertner  
Susan Gaertner, Arbitrator