

ARBITRATION AWARD

THE PROCEEDINGS

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did subsequently file by July 5, 2020. The Arbitrator requested, and was granted a seven-day extension in filing the award.

The following appearances were entered:

For the Employer:

Kevin Rupp

Attorney at Law
Minneapolis, MN

Kristin Nierengarten

Attorney at Law
Minneapolis, MN

For the Union:

Scott Higbee

Attorney at Law
St. Paul, MN

Renee Zachman

Attorney at Law
St. Paul, MN

THE ISSUE

DID THE EMPLOYER DISCHARGE OFFICER PETER NOLL FOR JUST CAUSE AND, IF NOT, WHAT SHALL THE REMEDY BE?

PERTINENT CONTRACT PROVISIONS

ARTICLE 5: EMPLOYER AUTHORITY

5.1 The Employer retains the full and unrestricted right to operate and manage all manpower, facilities and equipment; to establish functions and programs; to set and amend budgets; to determine the utilization of technology; to establish and modify the organizational structure; to select, direct, and determine the number of personnel; to establish work schedules and to perform any inherent managerial functions not specifically limited by the Agreement.

5.2 Any term and conditions of employment not specifically established or modified by this agreement shall remain solely within the discretion of the Employer to modify, establish, or eliminate.

ARTICLE 7: GRIEVANCE PROCEDURE

7.4 Procedure. Grievances, as defined by Section 7.1, shall be resolved in conformance with the following procedure:

Step 4. A grievance unresolved in Step 3 and appealed to Step 4 by the Union shall be submitted to arbitration subject to the provisions of the Public Employment Labor Relations Act of 1971, as amended. The selection of an Arbitrator shall be made in accordance with the "Rules Governing the Arbitration of Grievances," as established by the Bureau of Mediation Services.

ARTICLE 10: DISCIPLINE

10.1 The Employer will discipline employees for just cause only. Discipline will be in one or more of the following forms:

- a. oral reprimand;
- b. written reprimand;
- c. suspension;
- d. demotion; or
- e. discharge

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POLICY 343 PROFESSIONAL CONDUCT OF PEACE OFFICERS

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PRINCIPLE THREE- Peace officers shall perform their duties and apply the law impartially and without prejudice.

PRINCIPLE FOUR- 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.

PRINCIPLE SIX- Peace officers shall not compromise their integrity nor that of their agency or profession by accepting, giving or soliciting any gratuity

which could be reasonably interpreted as capable of influencing their official acts or judgments or by using their status as a peace officer for personal, commercial or political gain.

PRINCIPLE SEVEN- Peace officers shall not compromise their integrity, nor that of their agency or profession, by taking or attempting to influence actions when a conflict of interest exists.

BACKGROUND

The City of Lino Lakes, Minnesota, hereinafter referred to as the “EMPLOYER” or “CITY,” is a political subdivision of Anoka County, State of Minnesota and a public employer within the meaning of Minnesota Statutes. The Employer operates a Public Safety Department which provides both police and fire protection. Most fire fighters employed by the City are part-time paid employees. In addition, certain police officers, on a voluntary basis, have been cross trained for both police and firefighting duties.

Peter Noll, the Grievant in this matter, was initially employed by the City as a police officer in 2007. During 2014 the City decided to leave the Centennial Lakes Fire District and provide its own fire protection. It did so by creating a Public Safety Department and offering its police officers the opportunity to be cross trained as both police officers and fire fighters. Grievant volunteered to do so and was subsequently trained as a fire fighter in 2014 and 2015. Grievant served as a cross trained officer until May of 2019 when he resigned from his cross trained duties and returned to police only duties. At all times relevant to this grievance, Noll was represented by the Law Enforcement Labor Services and its Local No. 299, hereinafter referred to as the “UNION.” Grievant is also a Union Steward.

The instant grievance arose on September 18, 2019 following a brief exchange between Grievant and Public Safety Deputy Director Dan L’Allier. Both Grievant and L’Allier had responded to a cut gas line situation. L’Allier testified at the hearing that Grievant said “we’re not talking on F-Tac anymore.” F-Tac is a relatively new radio frequency that the Public Safety Department established in 2016 for communication within the department and specifically for use on fire calls by cross trained officers. L’Allier testified that he was somewhat caught off guard by Grievant’s comment but didn’t view it as important at the time and didn’t recall exactly what Grievant said. L’Allier further testified that he wasn’t upset with Grievant and didn’t follow up because “we had other things going on.” Nonetheless, L’Allier related this even to Public Safety Director/ Chief of Police John Swenson after the gas line event was over but testified that he couldn’t recall exactly what he told Swenson. Swenson further investigated the matter and, on September 20, 2019 issued Grievant the following Notice of Complaint:

Please be advised that there is a signed complaint alleging you engaged in employee misconduct concerning your duties as a police officer in the Lino Lakes Public Safety Department. Specifically, it is alleged that on September 18, 2019, you were involved in an incident in which:

Officer Pete Noll responded to a cut gas line in the 6900 block of West Shadow Lake Drive. It is alleged Officer Noll provided information to a supervisor, Deputy Director L’Allier, regarding radio communication. The information was not consistent with current or past practice.

Deputy Director Leibel contacted Officer Noll via phone on September 18, 2019, to provide clarification to Officer Noll on radio communication. During that phone conversation, it is alleged that Officer Noll provided false information to a supervisor, Deputy Director Leibel.¹

If these allegations are proven true, it would be a violation of the following department policies and procedures:

¹ The record reflects that John Swenson is the Director of Public Safety/Chief of Police; that Dan L’Allier is Deputy Director of Public Safety for Fire; and that Kevin Leibel is Deputy Director of Public Safety for Police.

LLPSD Policy 343 Professional Conduct of Police Officers

This internal investigation has been assigned to Marylee Abrams from Abrams & Schmidt, LLC. As part of this matter, you are not to discuss this incident with any department personnel, except those authorized as part of your labor rights.

Due to the nature of the allegations, you are being placed on a paid administrative leave until the investigation has concluded. It is expected that you will make yourself available as necessary for the investigation process.

A report of this internal investigation was submitted by Abrams on November 29, 2019.

While Abrams report is too lengthy to summarize here, she reached four conclusions:

- 1) F-TAC- Grievant conceded that he had stopped using the F-TAC channel for his radio communications when he resigned from his cross trained duties. However, Deputy Director Leibel maintained that all officers, whether cross trained or not, were expected to use F-TAC. Abrams therefore determined, after statements from Noll, Leibel and others, that Grievant had unilaterally terminated his use of F-TAC in violation of Department procedure.
- 2) Grievant's refusal to use F-TAC at the cut gas line site was unsafe and may well have interfered with the efficient resolution of the cut gas line incident.
- 3) Grievant was untruthful when he told D'Allier that he doesn't talk on F-TAC and then later denied making that comment during a phone conversation with Deputy Director Liebel.
- 4) Grievant may well have engaged in an unlawful work slow-down when he stopped using F-TAC and removed that channel from the scanned channels on his radio.

City Administrator Jeff Karlson issued Grievant a Notice of Intent to Recommend

Termination on December 5, 2019. This notice cites for grounds for termination:

violation of LLPSD Policy 343- Principle Three 2(a); Principle Four (1); Principle Six (e); and Principle Seven 2(a).

.....

The Investigator (Abrams) carefully reviewed your formal statement and concluded there was an apparent pattern of deception and avoidance. As noted by the Investigator, this is extremely problematic in light of the Garrity advisory and the multiple reminders that you were given about

answering truthfully. Your truthfulness raises a serious concern for the department regarding your future ability to perform your duties as a police officer.

Your ability to testify credibly in court proceedings is an essential function of your jobs as a police officer. Your dishonesty has compromised your ability to perform this function. Pursuant to the Brady/Giglio doctrine, if you were ever to testify in court as a police officer, the County Attorney would need to disclose your dishonesty to the defense.

I intend to bring the findings regarding the internal investigation (IA2019-03) to the City Council in a closed meeting on Monday, December 9, 2019, and recommend your termination. You have the right to respond to the charges at this meeting and present reasons why the discharge should not occur. You may request that the Council have an open session rather than a closed one. I will plan for this meeting to be in a closed session, unless I hear otherwise from you. This request must be submitted to me no later than 4:30 pm this coming Monday, December 9. ²

Lino Lakes Human Resources Manager Karissa Bartholomew issued Grievant the following Notice of Termination on December 10, 2019:

You are hereby notified that the Lino Lakes City Council terminated your employment with the City effective December 17, 2019, following a five-day suspension without pay in accordance with Section 10.5 of the LELS Local No. 299 labor agreement.

The grounds for your discharge are outlined in the intent to recommend termination notice provided to you on December 5, 2019.

Attached is information regarding your benefits and continuation opportunities.

LELS Business Agent Jay Maher contested Grievant's discharge in a letter to City Administrator Karlson on December 11, 2019. This letter stat

Law Enforcement Labor Services Local #299, on behalf of Officer Noll, hereby will submit a Step 4 Grievance (arbitration) in accordance with Article 7.4 of the Labor Agreement between City of Lino Lakes (Employer) and LELS (Union).

Nature of Grievance

² Grievant waived his right to appear and instead elected to challenge his discharge through the grievance procedure.

On December 10, 2019, the Employer issued a 5-day suspension preceding Officer Noll's termination without just cause.

Contract Violation

The Employer's action violated Article 10 of the labor agreement when it terminated Officer Noll without 'Just Cause.' Article 10, reads in part: "The Employer will discipline employees for just cause only."

Remedy Sought:

The Employer shall rescind the termination of Officer Peter Noll and immediately reinstate him; restore all back pay and benefits lost; remove any reference of the termination from his personnel file and anything else required to make him whole.

There is no contention that the grievance was untimely filed or improperly processed in accordance with the provisions of Article 7 of the parties' collective agreement. Accordingly, the grievance is properly before the Arbitrator for final and binding determination.

There is another 2019 grievance involving Grievant and two other officers which has some relevance to the instant grievance. On August 6, 2019 Grievant and Jackie McIntosh and Steve Wagner filed the following grievance against the Employer:

A verbal directive was given by Captain Owens requiring officers who have firefighter training but have opted out of serving in a cross-trained firefighter role to perform cross-trained firefighter duties. This directive included carrying and performing duties associated with the 4-gas monitor, mustang suit, rope bag and nebulus. Officers contest these equipment items and related duties performed would fall under cross-trained firefighter duties and as such are voluntary and would require compensation if required.

.....

Officers request (in remedy) compensation in accordance with the firefighter stipend as they have been directed to continue performing fire duties and carrying fire related equipment. Officers request that the carrying of equipment and execution of fire duties are only required of those opting to be voluntary cross-trained firefighters as has been the past standard for non cross-trained police officers.

This grievance was settled following mediation on October 4, 2019 whereby the Employer agreed to pay the three Grievants compensation for performing cross-trained duties and further agreed that the three Grievants were not required to carry the above noted fire equipment if they were not receiving the firefighter stipend. (i.e. that they were no longer participating in the voluntary cross-trained officer program). The Employer specifically retained the right to require equipment as necessary in squad cars and to retain discretion in allowing officers to participate in the firefighter stipend program as part of this grievance settlement. The settlement was signed by City Administrator Jeff Karlson and Union Business Agent Jay Maher. It is here noted that the charges against Grievant which gave rise to the instant grievance were filed while the above grievance of Officers Noll, McIntosh and Wagner was still being considered by the Employer.

CONTENTIONS OF THE PARTIES

The Employer takes the position that Grievant committed multiple incidents of untruthfulness regarding his use, or non-use of the F-TAC radio channel; that he was also untruthful to the Internal Investigator in his justifications and explanations for his admitted unilateral decision to discontinue the use and monitoring of the F-TAC channel; and that such acts of dishonesty effectively disqualify him as a suitable witness in any future court proceedings. The Employer also cites its prior decision to discharge another police officer for dishonesty. The Employer therefore argues that Grievant's dishonesty is in direct violation of Department Policy concerning the professional responsibility of police officers and that it had little alternative but to discharge Grievant for just cause. The Employer further argues that the Union's attempts to discredit the charges against

Grievant and dilute the Employer's just cause contentions were unsupported by substantial evidence.

The Union takes the position that Grievant was not dishonest and argues that it is unclear exactly what Grievant told L'Allier; what Leibel asked Grievant during his telephone conversation with Grievant following the above noted interaction with L'Allier; or how he phrased the statement that Grievant had allegedly made to L'Allier; that there is no evidence to show that Grievant intentionally misrepresented or deliberately attempted to deceive the Employer through his statements to Leibel or the Internal Investigator; and that there is no logical reason for Grievant to have been dishonest or untruthful after he voluntarily advised L'Allier that he didn't talk on F-TAC. Rather, the Union argues that Grievant is simply the unfortunate victim of the Employer's failure to communicate expectations for formerly cross trained officers and has taken advantage of miscommunication between Grievant, L'Allier, Leibel and Sweson as an opportunity to retaliate against Grievant for his opposition to, and withdrawal from the cross trained program. The Union further takes the position that the internal investigative report was biased and pre-determined and ignored facts favorable to the Grievant. The Union also cites Grievant's undisputed discipline free thirteen-year history of effective police service with no suggestion of dishonesty or untruthfulness. Finally, the Union contends that Public Safety Director Swenson was less than credible in his testimony regarding the use of F-TAC by all employees; that he failed to properly communicate his expectations for formerly cross trained officers to Grievant; and that he used the F-TAC incident as an opportunity to retaliate against Grievant.

DISCUSSION, OPINION AND AWARD

It is at once evident that the crux of this dispute rests on the credibility of the witnesses, particularly the Grievant, L’Allier and Liebel. These are the only individuals that have direct knowledge of the events that gave rise to the decision to discipline Grievant. Accordingly, it is critical to consider their respective testimony together with the body camera footage entered into evidence at the hearing.

Body Camera

Grievant was working at the scene of a cut gas line on September 18, 2019 and, with his body camera operating, approached Deputy Director L’Allier who was sitting in his vehicle. The video footage is clear. The interaction with L’Allier lasted approximately four minutes although Grievant was engaged in traffic control at the time and walked away from L’Allier for several minutes. The conversation between Grievant and L’Allier was professional and apparently friendly but the audio recording is poor, particularly at the end of their conversation. The audio does confirm that Chief Swenson was on his way to the scene and that L’Allier had released Grievant to attend to other duties. At this point, as he was about to leave the scene, Grievant approached L’Allier’s open window and said: “I don’t know if you guys know it or not” (at this point the conversation becomes unintelligible due to background noise but it is clear from the video that Grievant is still talking and L’Allier is looking at Grievant and listening with no change of expression.) Grievant then says “I don’t talk on F-TAC anymore” and L’Allier acknowledges this comment with “Yeah.” L’Allier’s face on the video suggests

that he either already knew or suspected that Grievant wasn't talking on F-TAC or that he was not surprised by Grievant's comment. Grievant then said: "I don't think any of the guys want to do fire anymore." Grievant then leaves the scene and turns off his body camera.

Testimony of Dan L'Allier

L'Allier testified at the hearing that while he didn't recall exactly what Grievant said to him and that he didn't know what Grievant said during the above noted inaudible portion of the conversation, he thought Grievant had said: "We're not talking on F-TAC anymore." This is significantly different than what the audio reveals (and Grievant testified to) because L'Allier's version suggests that other officers in addition to Grievant, presumably those who had also resigned from their cross trained positions, were not using F-TAC. When asked what he thought Grievant meant, L'Allier testified that he didn't think a lot about it at the time but thought Grievant was referring to the staff who had resigned from cross trained duties. L'Allier testified that he wasn't upset with Grievant; that he didn't think Grievant's comments were important at the time; and that he never followed up or attempted to clarify Grievant's comments about the use of F-TAC. L'Allier further testified that he did speak with Chief Swenson about the matter at the end of the incident but couldn't recall specifically what he told Swenson. In summary, L'Allier's testimony was candid and credible but fails to establish exactly what Grievant told him or what Grievant said during the inaudible portion of the conversation. Neither does it reveal what L'Allier reported to Swenson. Specifically, it does not support the charge that Grievant ever refused to use F-TAC. Neither does it indicate that

L'Allier ever discussed the use of F-TAC with Grievant or his expectations regarding its use.

Testimony of Kyle Leibel

Leibel testified that he was not at the scene of the September 18, 2019 gas line cut but that he had received a radio call regarding the cut and had dispatched both police officers and a fire engine to the scene and had called L'Allier to notify him of the incident. Leibel only became involved in the instant dispute after later receiving a message from Swenson asking him to contact Grievant and inquire about Grievant's use of the F-TAC channel. There is no indication in either the testimony of Leibel or Swenson of specifically what Swenson requested Leibel to do and what he related to Leibel from his conversation with L'Allier.³ Leibel testified that he then called Grievant on the phone; that there was poor reception on the call; and that Grievant had indicated that he wasn't monitoring F-TAC. Leibel further testified that he thought that there was a miscommunication problem regarding the use of F-TAC; that he didn't know if Grievant was using F-TAC or not; that Grievant had admitted that he wasn't monitoring F-TAC; and that he had corrected the problem with Grievant. He also testified that Grievant never refused to use F-TAC; that he didn't discuss Grievant's conversation with L'Allier with Grievant; and that in a subsequent examination of Grievant's radio he noted that the F-TAC channel was not being scanned. On cross examination Leibel conceded that he had no record of his conversation with Grievant, that he never met with Grievant, and that he only watched the body camera footage of L'Allier and Grievant on one occasion.

³ Indeed, Swenson's testimony revealed that he was unclear about what L'Allier had told him about Grievant's comments.

In summary, it is apparent that most of Leibel's knowledge of the incident was based on hearsay and that, at least initially, he concluded that the issue over Grievant's use of F-TAC was simply a matter of miscommunication. When Leibel was asked about communication problems regarding the expectation that all staff would monitor and use F-TAC, he was unresponsive. Given his testimony at the hearing, it is difficult to credit some of the statements contained in his investigative interview (Employer Exhibit #29).

Testimony of Grievant

Grievant testified that he resigned from his cross-trained position on May 25, 2019 in an e-mail to Chief John Swenson. Swenson responded that he was "sorry to hear that you will be stepping down as a Police/Firefighter" and that Grievant should coordinate with Leibel to discuss "response expectations going forward effective May 26th." This coordination apparently never happened. At this point it is clear that Grievant expected that he would return to police only duties. Presumably this included discontinuing use of F-TAC when he turned in his fire issued equipment. Grievant testified that he received no specific instructions regarding the use of radio channels following his resignation from cross trained duties; that he thought F-TAC was specifically for fire issues; that the R-Common channel would be more relevant to his police duties; but that he continued to be confused about expectations for his duties. Accordingly, Grievant sent an e-mail to Police Captain William Owens, Deputy Director Leibel and Sergeant Melissa Christensen on July 29, 2019 which states:

So all officers are on the same page and have the same info and are not caught off guard, can you please send out something to everyone with the expectations related to fire equipment and responding to fire related calls from a non-crossed trained level?

Grievant received no response to this e-mail and Liebel testified that he was not aware that any response was made. Obviously there was no answer to Grievant's query about responding to fire related calls or the use of F-TAC. It must also be noted in this connection that Grievant and officers McIntosh and Wagner filed a grievance over their alleged forced continued participation in the cross trained program on August 6, 2019.

Grievant testified at the hearing that he was simply passing information on to L'Allier when he advised him that he didn't talk on F-TAC; that he was not thereby refusing to use F-TAC; and that he thought that other officers who had resigned from cross-trained duties were no longer monitoring F-TAC. He further testified that he discussed the F-TAC issue on the phone with Liebel; that Liebel told him that he needed to use F-TAC; and that he had never refused to use F-TAC or intended to give the impression that he had done so. Like L'Allier, Grievant was unable to recall what he said during the inaudible portion of the body camera footage, *supra*. In summary, while Grievant's testimony was generally credible, it cannot be denied that he was at times hesitant and uncertain and appeared to have difficulty recalling specifics. His testimony was vague in some instances and often less than articulate. Indeed, Grievant was unable to recall how often, if ever, he used F-TAC after his resignation from cross trained duties or even monitored the channel. He insisted that he hadn't used the F-TAC channel since his resignation and didn't think that he was obligated to do so.

Based on the cumulative testimony of the three critical witnesses, the Arbitrator is compelled to find that:

- 1) The Employer inadequately communicated its expectations for the use of the F-TAC channel to officers in the Public Safety Department. This finding is

supported by Employer Exhibits #14 and #24 which document the creation of the F-TAC channel but does not contain an effective date for its use by all Public Safety Employees. No Employer witness was able to testify to such an effective date although it may have been in early 2019. Further, it is undisputed that probationary and non-cross trained officers were never trained to use F-TAC. Accordingly, it is evident that there was a perception among officers in the Public Safety Department that F-TAC was for fire issues only, Swenson's testimony notwithstanding.⁴

- 2) Grievant never refused to use the F-TAC channel although he admittedly stopped monitoring/scanning the channel, thereby effectively discontinuing its use.

Further, the Employer was unable to establish that formerly cross trained officers knew they were expected to use F-TAC.

- 3) There is insufficient evidence to show that Grievant was untruthful in his conversations with L'Allier or Leibel or that he intended to deceive either Deputy Director. On the contrary, Grievant was quite transparent in his voluntary comments to L'Allier and had a good faith, if erroneous, belief that he was not obligated to monitor or use F-TAC following his resignation from cross-trained duties.

⁴ Swenson testified that while there was no clear effective date for the universal use of F-TAC within the Public Safety Department, it was "common knowledge" that this new channel was to be used by all. However, he admitted that there was no written order and that "it was assumed that they would all use F-TAC." Such an assumption is not supported by the record of the hearing. The record also reveals that Swenson was unaware at the time of Grievant's discipline that some officers had never been trained on, and were not using F-TAC.

The Arbitrator must therefore concur with Leibel's initial conclusion that Grievant's actions in discontinuing the use of F-TAC were the result of miscommunication rather than a willful decision to deceive or provide conflicting information.

The above noted grievance submitted by Grievant and others is troubling due to its timing. While circumstantial, this grievance clearly reflects the fact that the officers who had resigned from their cross trained positions were unclear as to their new duties and objected to their continued assignment to fire related duties after their resignation from their cross trained positions. Indeed, it appears to reflect the Employer's ambivalence about the types of duties that should properly be assigned to those who were reluctant to continue performing fire related assignments. However, it is clear that this grievance was not specifically related to whether or not Grievant was using F-TAC or that Grievants were objecting to the use of F-TAC if they were not performing cross trained duties.

The Internal Investigation of Grievant's conduct was conducted by an experienced external investigator. While the above findings are at variance with her conclusions, it is here noted that the Investigator was limited and constrained by the information provided by the Employer, particularly the information related to the communication of, and expectations related to the utilization of the F-TAC channel. While Grievant admitted to the Investigator that he had stopped using F-TAC, it is evident that Leibel's conclusion that all officers knew that they were expected to use F-TAC was erroneous, a conclusion which the Investigator relied upon. The Arbitrator deems it unproductive to further address this matter.

The Investigator also noted the potential safety concerns raised by Grievant's decision to discontinue using F-TAC. While those concerns are legitimate, there is no evidence to show that Grievant's failure to communicate on F-TAC during the September 18, 2019 incident interfered with the safe and efficient performance of his duties at the cut gas line scene or created an unsafe situation for his co-workers or the public.

The Investigator's conclusions concerning Grievant's alleged untruthfulness to L'Allier and Leibel have been addressed above. The Investigator also concluded that Grievant had been untruthful in indicating that other officers, particularly McIntosh and Wagner, had stopped using F-TAC. While both McIntosh and Wagner testified that they could not specifically recall conversations with Grievant concerning the use of F-TAC, they both testified that they had had general conversations with Grievant in the past concerning their opposition to the cross training program, their collective decision to resign from cross-trained duties, and their perception that F-TAC was for use by cross trained officers only. They further testified that they were friendly with Grievant, trusted him and found him to be honest. It is therefore understandable that Grievant may have erroneously concluded that McIntosh and Wagner had also stopped using F-TAC as well. Accordingly, Grievant's claim that he had discussed discontinuing the use of F-TAC with Wagner and McIntosh cannot be deemed an attempt to deceive the Investigator. The Investigator also concluded that Grievant may have engaged in an unlawful work slow-down by discontinuing to fully utilize F-TAC. This contention is simply unsupported by the record of the hearing.

Finally, the Employer determined that Grievant had violated Departmental Policy related to the Professional Conduct of Peace Officers through his alleged untruthfulness

and contradictory statements. Given the above discussion and findings, these alleged violations of policy cannot be sustained. While it is true that Grievant unilaterally discontinued the monitoring and use of the F-TAC channel, this incident of self-help is mitigated by the lack of direction and silence of the Employer regarding Grievant's duties and obligations as a former cross trained officer. Indeed, given the lack of evidence to support the Employer's claim of untruthfulness and deception on Grievant's part, it is difficult to understand the Employer's decision to charge Grievant with the policy violations noted above, particularly in light of his lengthy and competent prior service as a police officer. This decision on the part of the Employer lends credence to the Union's argument that the disciplinary action grieved here was motivated, at least in part, by the Employer's desire to retaliate against Grievant for his opposition to the cross trained officer program.

Brief comment is warranted concerning the allegation that Grievant's dishonesty was comparable to the case of another City officer who had resigned after it was established that she had been blatantly dishonest in claiming to be sick and off work when she was actually engaged in personal entertainment. This case is hardly comparable, either in circumstance or severity, to the instant case and must be dismissed as immaterial. In this connection, brief further comment is warranted to the Employer's argument that it had little alternative but to discharge Grievant since his dishonesty would dilute his effectiveness as a witness in court under the so-called Brady-Giglio doctrine. This doctrine requires prosecutors to disclose any proven dishonesty by officers who serve as witnesses and allows the defense to attempt to discredit that officer's testimony.

Since there is insufficient evidence here of Grievant's untruthfulness, the Brady-Giglio argument advanced by the Employer must be deemed irrelevant.

The Arbitrator has made a particularly detailed review and analysis of the voluminous record in this matter and he has given close attention to the arguments raised by the parties at the hearing and in their post hearing briefs. Further, he has determined that certain issues and arguments raised in these proceedings must be deemed immaterial, irrelevant, or side issues at the very most and therefore has not afforded them any significant attention, if at all. For example: whether or not Investigator Abrams knew of the August 6, 2019 grievance involving Grievant, McIntosh and Wagner; whether or not Abrams interviewed Officer Mobraten; whether or not Union Business Agent Maher participated in the interviews/formal statements of Grievant, McIntosh and Wagner; whether or not Grievant was a Union Steward; Grievant's alleged work slow down by discontinuing the monitoring of F-TAC; and so forth.

Having considered the above review and analysis, together with the findings and observations hereinabove made, the Arbitrator has determined, and so he finds and concludes, that with the specific facts of the subject grievance and within the meaning of the parties' collective agreement, the Employer did not have just cause to discharge Grievant Peter Noll. Accordingly, an award will issue, as follows:

AWARD

THE EMPLOYER DID NOT HAVE JUST CAUSE TO DISCHARGE GRIEVANT. THE GRIEVANCE OF PETER NOLL MUST BE, AND IS HEREBY, SUSTAINED. GRIEVANT'S DISCHARGE SHALL BE REDUCED TO A WRITTEN REPRIMAND FOR

UNILATERALLY DISCONTINUING THE USE AND
MONITORING OF THE F-TAC CHANNEL, AN ACT
OF SELF HELP.

REMEDY

GRIEVANT SHALL BE REINSTATED FORTHWITH
WITH NO LOSS OF PAY, SENIORITY OR BENEFITS
AND ALL DOCUMENTATION RELATING TO HIS
DISCHARGE, SAVE THE ABOVE LETTER OF
REPRIMAND, SHALL BE EXPUNGED FROM HIS
PERSONNEL RECORD.

THE ARBITRATOR RETAINS JURISDICTION FOR
SIXTY (60) DAYS SOLELY WITH RESPECT TO
IMPLEMENTATION OF THE REMEDY.

JOHN REMINGTON,
ARBITRATOR

August 8, 2020

Inver Grove Heights, MN

ARBITRATOR'S FEES AND EXPENSES
BMS 20 PA 1207
City of Lino Lakes and LELS

Fees:

2 Hearing Days @ \$1000/ day	\$2000	
4 Study and Writing Days @ \$1000	<u>4000</u>	
Fee Total		\$6000

Expenses:

Mileage: Inver Grove-Lino Lakes (2 Round Trips)		
120 Miles @ .575/ mile	\$ 69.00	
Meals	NC	
Word Processing @ \$7.50/ page	<u>157.50</u>	
Expense Total		\$226.50
Total Due		\$6226.50

Payable by the Employer \$3113.25

Payable by the Union \$3113.25

Please make checks payable to: John Remington, Arbitrator
6140 Doffing Avenue #31
Inver Grove Heights, MN 55076