

IN THE MATTER OF ARBITRATION BETWEEN

**LAW ENFORCEMENT LABOR
SERVICES, INC.
[Name Redacted]**

**Opinion and Award
BMS Case No. 11-PA-0834**

AND

THE CITY OF SHAKOPEE, MINNESOTA

ARBITRATOR

Joseph L. Daly

APPEARANCES

On behalf of LELS

Christopher K. Wachtler, Esq.
Collins, Buckley, Sauntry & Haugh
St. Paul, MN

On behalf of The City of Shakopee

Marilee Abrams, Esq.
Arden Hills, MN

JURISDICTION

In accordance with the Labor Agreement between the City of Shakopee and Law Enforcement Labor Services, Inc., January 1-December 31, 2010; and under the jurisdiction of the State of Minnesota Bureau of Mediation Services, St. Paul, Minnesota, the above grievance arbitration was submitted to Joseph L. Daly, Arbitrator, on July 25 and 26, 2011. Post hearing briefs were filed by the parties on August 25

(Union) and August 26 (City of Shakopee). The decision was rendered by the arbitrator on September 8, 2011.

ISSUE AT IMPASSE

The Union and the City of Shakopee agree that the issue is: Did the employer have just cause to issue a one-day suspension to police officer [Name Redacted]?

RELEVANT CONTRACT PROVISION
ARTICLE X. 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.

FINDINGS OF FACT

1. By letter dated January 20, 2011, Chief of Police Jeff Tate suspended Officer [Name Redacted] for one day. The disciplinary action letter stated in full:

DATE: January 20, 2011

TO: Officer [Name Redacted]

FROM: Chief Jeff Tate

SUBJECT: Disciplinary Action – Suspension

An internal affairs investigation has been conducted in regards to your actions on June 18, 2010, when you returned a Department issued jacket to Streicher's and requested cash back.

Specifically:

- On June 18, 2010, you returned a Department issued jacket to Streicher's and admitted you had asked the clerk for cash back. The origins of the jacket cannot be adequately determined. You claim the jacket was part of your initial uniform purchase by the Department and that it sat unused in your locker or at your home for the past four years. There are serious discrepancies with your account. The store records and statements taken from store staff indicate the jacket was purchased for a CSO, who was previously employed by the Shakopee Police Department.
- The Streicher's clerk denied your request for cash back, advising you the jacket was purchased by the Shakopee Police Department. Instead of cash back you were given a credit. You then purchased several items with the credit and exited the store to telephone your supervisor, Sgt. Trutnau, who was on an extended vacation at the time. After speaking with Sgt. Trutnau, you re-entered the store and made several more purchases, using the credit.
- You characterized your purchases with the store credit, in e-mails to both Capt. Robson and Darlene Bjerketvedt, as "duty gear" and "work equipment." The purchases included khaki pants. (Charcoal pants were delivered). Neither khaki nor charcoal pants are part of the Shakopee Police Department official uniform. Your purchase of these items was determined to be for personal use, and not work use as you had represented to Capt. Robson and Darlene Bjerketvedt.
- Additionally, you helped yourself to two pair of uniform pants from Department surplus, in violation of Department policy. The surplus uniforms and equipment are used to equip new employees and CSOs. You have a contractual uniform allowance included in the labor agreement, which you are to use to purchase any replacement uniforms and equipment.

You violated the following Shakopee Police Department Policies and Directives:

Department Directive 1.1.2 Code of Ethics

Department Directive 26.1.1.A.3 Conduct Unbecoming An Officer

Department Directive 26.1.1.A.6 Responsibility to Superiors

Department Directive 26.1.1.15 (b) Unauthorized Use of
Department Property for Personal Use
Department Directive 26.1.1.C. Uniforms (Uniform Issue)
Special Order 2006-03

Conclusion

Review of the internal affairs investigation revealed serious violations of Department Policies and Directives. As a result, you are suspended for one (1) day without pay. You are to coordinate the suspension with Sgt. Forberg.

Department policy specifies all uniform items provided to agency personnel by the City of Shakopee remain City property and must be turned in upon termination from employment. You attempted to return a Department issued jacket for cash. The jacket did not belong to you, but rather was the property of the City of Shakopee. Your actions have shown a lack of judgment and character and brought discredit to yourself, the Department and the City.

During your internal affairs statement, your conduct and demeanor were disrespectful to your superior officers, and you also exhibited a lack of candor during the investigation, which was also unacceptable. You changed your account on three separate occasions when asked about whether or not the clerk at Streicher's had scanned the jacket with a bar code reader. You initially reported to Capt. Robson that the clerk had scanned the jacket. This statement was made in September, prior to initiation of the formal investigation. Your recollection changed, and you denied the clerk scanned the jacket during your garrity statement in October. Finally in November, despite reviewing your October transcribed statement, you could not remember if the clerk had scanned the jacket.

Additionally, you misrepresented to both Capt. Robson and Darlene Bjerketvedt that you had purchased "duty gear" or "work equipment" with the store credit. You admitted to returning a Department issued jacket to Streicher's. You also admitted you tried to secure cash from the store clerk. You attempted to convert the value of the jacket for your own personal use.

When you were initially employed by the Department you were issued Special Order 2006-03, which outlines the Department's ethical expectations of its police officers. You were advised that your actions in terms of right and wrong, must be exemplary and that you must not engage in inappropriate conduct. Your actions to return a Department issued jacket

four years after you received it, and request cash back, violated that Special Order and the trust placed in you by the Department.

You are expected to follow all policies and directives of the Department. Please be advised that further acts of misconduct will result in disciplinary action up to and including termination from employment.

Your signature below indicates receipt of this notice and is not intended to indicate your agreement with the content of the notice.

_____/s/_____
Officer [Name Redacted]

_____/1-20-11_____
Date

2. The Union grieved the suspension.

3. **The City of Shakopee contends** that on June 18, 2010 Shakopee Police Officer [Name Redacted] walked into Streichers Uniform and Equipment Store with a Shakopee Police Department Jacket in her hand. The tags were still on the jacket. She put it on the counter and asked the sales clerk for cash back. Streichers' sales clerk, Peter Erickson, checked his computer and told her he could not give her cash back, because the jacket had been purchased by the Shakopee Police Department. Due to Streichers' store policy, he could only give her store credit. She asked several more times for cash back, and each time the sales clerk denied her request. He eventually issued her a \$175.00 store credit for the returned jacket.

Officer [Name Redacted] used the store credit to purchase a pair of khaki BDU cargo pants and a key holder. She then left the store and went outside to her car. At 1:27 p.m. she made a phone call to the Shakopee Police Department. At 1:32 p.m. she called Shakopee Police Sgt. Angela Trutnau's personal cell phone. Sgt. Trutnau was on an extended vacation at the time. Officer [Name Redacted] inquired of Sgt. Trutnau

whether it would be a problem if she returned her department issued jacket, and used the store credit for Streichers to get other uniform “stuff”. Officer [Name Redacted] asked if it would be a problem because the receipts would go through the police department. Sgt. Trutnau said as long as she was getting equipment that was uniform appropriate, she didn’t think it would be a problem.

Officer [Name Redacted] did not tell Sgt. Trutnau she had already purchased a pair of khaki pants and a key holder on the store credit before calling her. At the conclusion of the phone call, Officer [Name Redacted] went back into Streichers and purchased boots, a handcuff chain, and a cuff strap, exceeding the store credit by \$11.00.

In September 2010, Shakopee Police Capt. Robson was approving bills for payment, and came across the Streicher store credit, generated by Officer [Name Redacted]. It raised questions for him as it was unusual, and he decided to look further into the store credit. He requested information from the Finance Department on Officer [Name Redacted] original uniform issue, and learned the jacket originally issued to Officer [Name Redacted] did not match the jacket she returned to Streichers on June 18, 2010.

Capt. Robson initiated an Internal Affairs Investigation, to take a closer look at the return of the jacket by Officer [Name Redacted]. He interviewed sales clerk, Peter Erickson and a seamstress, who both advised him that the jacket Officer [Name Redacted] returned on June 18, 2010 was a size small/short “5.1.1, 4-in-1 Jacket”. The Streichers’ seamstress also indicated she removed four CSO (Community Service Officer) patches from the jacket Officer [Name Redacted] returned. Officer [Name

Redacted] has never been employed by the Shakopee Police Department as a Community Service Officer. The jacket originally issued to Officer [Name Redacted] was a “5.1.1 Precinct Jacket” valued at \$139.00. The store credit that Officer [Name Removed] received from Streichers was \$175.00, the value of a “small/short 5.1.1, 4-in-1 Jacket”.

The Department has a long history of re-issuing serviceable equipment and uniforms, before making any new purchases from a retail store. Additionally, the Department policy requires all Department issued uniform and equipment to be turned back to the Department, upon leaving employment. The policy helped to stock a surplus uniform and equipment locker, located in the men’s locker room, which was used to outfit new hires, new Community Service Officers, and Explorers.

Officer Cody Horner had been provided the padlock combination for the surplus locker by his supervisor, so he could assist in distributing uniforms and equipment to the new hires. In August, 2010 Officer Horner mentioned this to Officer Bridget Rettke, who took it upon herself to go into the men’s locker room escorted by Officer Horner, and take items out of the surplus locker. She then placed those items in the women’s locker room, and she sent an e-mail to all female officers indicating there were surplus uniform items available in the women’s locker room, and they could help themselves. This parallel investigation resulted in a number of coaching letters being issued to various officers.

The investigation of Officer [Name Redacted] actions required Capt. Robson to take a number of officers’ statements, as well as three statements from Officer [Name Redacted]. During the second statement, Officer [Name Redacted] responded

disrespectfully toward Capt. Robson when she leaned in, raised her arm, and pointed her finger at him and stated, “I’m gonna ask you” in response to one of his questions. This caused Officer [Name Redacted] union representative to drop her pen and reach her hand forward to signal to Officer [Name Redacted] to back down. It also caused the Union Steward to cover his face with his hand.

Officer [Name Redacted] was issued a one day suspension for violating department policy in regards to returning a department issued jacket, which she tried to convert into cash, and for her disrespectful conduct toward a superior officer. A grievance was filed by the union resulting in the present grievance arbitration. [*see generally* Post Hearing Brief of *City of Shakopee* at 1-3].

The basic arguments of the City of Shakopee are:

- a. The employer has met the burden of proof required to suspend Officer [Name Redacted] for one day. The employer bears the burden of proof to establish it had just cause to support the disciplinary decision to suspend Officer [Name Redacted] for one day. It has established that burden of proof. Why? Because in her two statements she admitted to asking for cash back for department issued jacket; she admitted to making purchases on the credit given by the store, before calling a supervisor; she admitted to taking several uniform pants out of the surplus uniform supply for her personal use; she admitted she knew the department reissued equipment and uniforms to save money; and during the arbitration hearing itself, she admitted for the first time to violating department policy. [*Id.* at 4]
- b. The level of discipline issued by the employer was appropriate. Officer [Name Redacted] had clear notice concerning the Department’s expectations, including a Special Order when she started her employment which clearly set out the Department’s Ethical Code of Conduct and the Mission Statement of the police department in Shakopee calling for “integrity” and “professionalism”. Further, for the very first time during the arbitration hearing, Officer [Name Redacted] admitted she had violated Department Policy.”[T]his is not a case about coats or bad employees at Streichers, but rather it is a case about conduct.” [*Id.* at 7] “Officer [Name Redacted] was not

disciplined based on which coat she returned, or what patches were on the sleeves. The Department could not establish with sufficient certainty what coat she actually returned, and Officer [Name Redacted] was given the benefit of the doubt.” [Id. at 8] “Officer [Name Redacted] was suspended for 1-day in part for returning a department issued jacket, and trying to obtain cash for it, which was made very clear by Chief Tate. The jacket returned by Officer [Name Redacted] was Shakopee Police Department property, and not hers to return for cash. The Shakopee Police Department has a history of being financially responsible, and reusing serviceable equipment and uniforms before purchasing retail to equip new employees.”

- c. Officer [Name Redacted] was disrespectful and insubordinate to a superior officer. Law enforcement operates under a para-military structure necessary for the same operation of almost every function of the agency. Insubordination, a form of disrespect toward a superior officer is an inexcusable act in violation of department policy and training. [Id. at 12] By Officer [Name Redacted] responding to a question from Capt. Robson “I’m gonna ask you.” And leaning in and pointing her finger, supports the conclusion her conduct was disrespectful toward a superior officer.
- d. Officer [Name Redacted] received fair and equitable treatment. Chief Tate in a well reasoned and appropriate decision, decided to suspend Officer [Name Redacted] for one day. The Chief methodically, thoroughly and reasonably decided to suspend her for one day after a careful analysis and consideration.
- e. There was no disparate treatment of Officer [Name Redacted]. Officer [Name Redacted] had received a prior reprimand as a police officer, despite her testimony that she had a spotlessly clean record.

4. **The Union contends** that the winter jacket that Officer [Name Redacted] took back to the Streicher’s Police Supply Store in Minneapolis was the exact jacket she had purchased four years earlier but had never worn. It was in new condition with the tags still on it. Because Streichers would not allow her to exchange it for cash, Streichers issued Officer [Name Redacted] a \$175.00 credit for the jacket, which she used to purchase items she later utilized to perform her duties and responsibilities as a police officer. “Officer [Name Redacted] does not dispute the fact that she returned a

department-issued jacket, or that she asked initially for cash back for that jacket, or that she ultimately received credit for the jacket, which she used to purchase various items. She does not dispute that she retained possession of two pairs of pants from a storage locker at the department.” [Post Hearing Brief of Union at 5].

However, she strongly disputes the accuracy of some of what is contained in her disciplinary letter, especially as it relates to the nature of the items she received for credit, and as it relates to her being disrespectful to her supervisors during the investigation. She also strongly disputes the idea that the policies she is said to have violated are clearly or consistently enforced so maintains that the level of discipline imposed here is inappropriate.

Basically the Union and Officer [Name Redacted] contend:

- a. Officer [Name Redacted] returned a “5.1.1 Jacket” issued to her by the Department in 2006, not a “5.1.1 4-in-1 Patrol Jacket” belonging to another officer. On July 17, 2006, Shakopee Police Department ordered her a “Spiewak” brand medium-short size jacket for \$239.95 from Streichers. Officer [Name Redacted] testified that because this jacket had not yet arrived when the weather started to get cold, she was forced to utilize her old Montgomery Police Department Jacket during the early winter of 2006. She had removed the Montgomery Police Department patches and replaced them with the Shakopee Police Department patches. Eventually, on December 5, 2006, she changed her order at Streichers from the “Spiewak” jacket, which never arrived, to a medium-regular “5.1.1 Precinct” brand jacket. This jacket is a two piece jacket and has a liner which an officer would not wear by itself. It is the nature of a large quilted “paneled” liner. Officer [Name Redacted] testified that this jacket arrived in 2006, but it did not fit. It was too long, and she could not access her duty weapon when she was wearing it. So she continued to wear her Montgomery “Blauer” jacket and put the “5.1.1 Precinct Jacket” in the locker. She later brought it home and put it in the closet where it sat for 4 years. She never wore it. It was this jacket she returned to Streichers on June 18, 2010. However, the City believes she returned a different jacket: a small/short size “5.1.1” brand jacket which is called a “4-in-1 Patrol Jacket”. It has an outer shell and a removable fleece liner that one could wear by itself.

The City has only ordered two small-short sized jackets from Streichers since 2004, one for Officer Kathleen Siercks and one for Community Service Officer Megan Manny. Because Capt. Robson had possession of Officer Siercks' jacket before he interviewed Officer [Name Redacted] as part of his investigation, and based on information received from employees at Streichers, he believed Officer [Name Redacted] had attempted to return the Officer Manny jacket on June 18, 2010. This conclusion rests largely on the testimony of Streichers' salesman, Peter Erickson, who took the returned jacket from Officer [Name Redacted], and the statement of seamstress Marcia Obillo, who told Capt. Robson that she had taken CSO patches off a jacket but this was 4 months after the fact. She told him "it's hard to remember when it is a long time." She did not remember the size of the jacket or the type of the jacket. She failed to appear for the hearing to testify, although she was placed under subpoena by the Union. The City did not call her as a witness. The Union contends her statement should be disregarded as unreliable hearsay. [Post Hearing Brief of Union at 11].

Sales clerk Peter Erickson testified at the arbitration hearing and admitted that when Officer [Name Redacted] approached him on June 18, 2010, he failed to follow his own return policy. He admitted that the part number for the jacket Officer [Name Redacted] maintains she returned [the "5.1.1 Precinct Jacket", Streichers' part no. 425 or "5.1.1" part no. 58025] was discontinued and Streichers had not sold that jacket since 2009. In his statement sales clerk Erickson testified he scanned the jacket Officer [Name Redacted] tried to return and "that part was discontinued."

Conversely, the part no. for the jacket he and the City claims she tried to return ["5.1.1 4-in-1 Patrol Jacket", Streichers' part no. 427 or "5.1.1" part no. 48027] was not discontinued. Streichers still sells that jacket for \$249.99.

When he gave a statement to Capt. Robson some four months later, Mr. Erickson was "so confused about which jacket Officer [Name Redacted] had returned" [*Id.* at 8] that Mr. Erickson referred to the jacket as "a 4-in-1 Precinct"; "a 5.1.1, I know that for sure"; "a Patrol"; "a 5-in-1" (which is completely different than the "5.1.1" jacket style); "5.1.1 4-in-1", but only after Capt. Robson showed him the invoice.

Also, Mr. Erickson testified at the hearing that he "did not remember" whether the jacket had Shakopee CSO patches as the Manny jacket would have, or Shakopee Police Jacket, as Officer [Name Redacted] "5.1.1 Precinct Jacket" would have.

Mr. Erickson also indicated in his statement that he pulled the main invoice up on his computer as a reference so he could return the jacket Officer [Name Redacted] presented to him. But at the Arbitration Hearing, he testified that the jacket she tried to return and the Megan Manny Jacket were the very same jacket. This cannot be true because the Manny Jacket was ultimately recovered from Shakopee SCO Crystal Marks.

The Union contends “it appears obvious that Erickson could not have technically scanned the jacket to return it when Officer [Name Redacted] brought it back, because it was a “5.1.1 Precinct Jacket” that had been discontinued. “He should have been able to return a jacket showing part no. 427 immediately (instead of scrolling on his computer for minutes, as Officer [Name Redacted] testified he did (without having to use the Manny invoice at all, because that part no. still exists.)” [*Id.* at 9, emphasis in original].

Mr. Erickson’s statement that Officer [Name Redacted] told him that she was returning Megan Manny’s jacket makes absolutely no sense, especially given the fact that Megan Manny’s jacket eventually was recovered. Mr. Erickson struggled to remember Manny’s name during his statement, until prompted by Capt. Robson [*See Id.* at 9].

The Union contends “it is entirely plausible that Erickson, months later, associated Megan Manny’s name with the transaction because either: 1) that was the invoice he used, for whatever reason, to return the jacket; or 2) Capt. Robson had suggested this name to him when they first talked in September, as Capt. Robson had already spoken to Manny as part of his investigation and believed the jacket at issue was hers.” [*Id.* at 10].

- b. Officer [Name Redacted] relied upon the guidance of a supervisor in taking the action she did on June 18, 2010 and therefore should not have been suspended for those actions. She testified she called Sgt. Trutnau because it is known within the Department that Sgt. Trutnau is knowledgeable with regard to City policies. Sgt. Trutnau, herself, acknowledged this at the arbitration hearing. Further, Sgt. Trutnau told Capt. Robson when he interviewed her on September 8, 2010 that Officer [Name Redacted] had called her “after the sales person at Streichers would not give her cash for the return. This means that Sgt. Trutnau knew that Officer [Name Redacted] had tried to return the jacket for cash, but had been refused. [Post Hearing Brief of Union at 13].
- c. The items Officer [Name Redacted] received for credit were not for “personal use” and she did not make “misrepresentations” to her supervisors. The disciplinary letter insinuates lying on the part of Officer [Name Redacted], but “nothing could be further from the truth.” [*Id.* at 14]. In fact, the BDU pants

she purchased, while not part of the Shakopee Police Uniform, were necessary for training purposes, much like boots, which are also not part of the official uniform.

- d. The investigation was neither complete, nor fair, nor objective. By the time Capt. Robson interviewed Officer [Name Redacted] on September 9, 2010 “it seems apparent that Capt. Robson suspected that she had violated Department policy and he was conducting the early stages of an official investigation”. [*Id.* at 15]. In Capt. Robson’s mind, it absolutely had to be the Manny jacket Officer [Name Redacted] had tried to return, and he believed he had enough evidence to get her charged criminally.” [*Id.* at 16]. But it turns out he was wrong, because the Manny jacket was in possession of the Shakopee Police Dept. CSO, Crystal Marks.” [*Id.*]
- e. The City has failed to administer and enforce policies regarding use of surplus department equipment. Consequently Officer [Name Redacted] should not be disciplined for taking two pairs of surplus pants. No policy listed the disciplinary letter relates specifically to Officer [Name Redacted] taking the two pair of surplus pants. Two other officers were counseled for doing the very same thing under a different policy, but Officer [Name Redacted] letter does not reference that policy. Capt. Robson admits it is difficult to find or track down department jackets, uniforms and supplies. His report states on page 6: “unfortunately department methods of securing and accounting for surplus uniform supplies do not lend themselves for accurate accounting over the long run and have been called into question during this investigation.” Department admittedly engaged in poor management of surplus equipment, created and allowed an environment where surplus equipment was a “free-for-all” and the policy was regularly violated buy both subordinates and supervisors. [*Id.* at 18].
- f. Officer [Name Redacted] was forthright and honest during the internal affairs process and was not disrespectful to her superiors. “Officer [Name Redacted] testified that she was misunderstood, and that any emotion her superiors perceived was not disrespect, but instead came as a result of being questioned for hours, over and over again, about the same incident, telling the truth, and not being believed.” [*Id.* at 19]. When she stated to Capt. Robson in response to his question regarding what she would do differently if she had to “replay this thing” she replied “I am gonna ask you”. She meant she would consult the captain before taking a similar action in the future. This was not meant to be disrespectful.

The Union basically contends that Officer [Name Redacted] “was neither disrespectful, nor intentionally deceptive, and that she did not display a lack of

candor. The Union requests that the arbitrator order the City to excise the entire letter or at least portions of the letter that discuss certain issues, if the letter is to remain in her file. Further, the Union asks the arbitrator to uphold the grievance by vacating the suspension and ordering the City to remove the letter from her file and destroy it. In the alternative, the Union requests that the arbitrator or that the discipline be reduced and order the City to excise portions of the disciplinary letter, as detailed in the Unions post-hearing brief.

DECISION AND RATIONALE

“There is something inherently dishonest about trying to convert department property into cash.” [Post Hearing Brief of Shakopee at 17]. “It is not acceptable to disrespect a supervisor, especially in a formal setting in front of others.” [*Id.*]. These are the bases for Chief Tate’s decision to discipline Officer [Name Redacted]. “This is not a case about coats or bad employees at Streichers, but rather it’s a case about conduct.” [*Id.* at 7]. “Officer [Name Redacted] was not disciplined based on which coat she returned, or what patches were on the sleeves. The Department could not establish with sufficient certainty what coat she actually returned, and Officer [Name Redacted] was given the benefit of the doubt.” [*Id.* at 8.]

As evidenced by the quotes above from Shakopee’s Post Hearing Brief, Chief Tate was mainly concerned about 1) converting Department property into cash; 2) potential lying; and 3) disrespect of a superior officer.

CASH BACK

With respect to getting cash back for the return of the jacket, Officer [Name Redacted] explained that Article XXI of the Collective Bargaining states “Employees will be paid a uniform allowance during January of each year. The allowance will be eight hundred (\$800.00) dollars for calendar year 2010.” It was her understanding that

she could take the \$800.00 and use it for the purchase of uniforms or simply keep the money until she needed to purchase uniform equipment at some other date.

Capt. Robson's report [City Exhibit, Robson Tab A] shows that Sgt. Tratnau told him on September 8 that Officer [Name Redacted] had called her "after the salesperson at Streichers would not give her cash for the return". So from the very beginning, Officer [Name Redacted] stated that she was trying to return the jacket for cash. She did not and does deny this fact.

Is it proper for her to return a piece of unused equipment for cash? Testimony at the arbitration hearing indicated that Officers spend the \$800.00 they receive for uniform allowance each year when and if they choose. Article XXI does not tell them when they must spend the money. In the Collective Bargaining Agreement, the City and the Union agree that the City will pay a uniform allowance of \$800.00 to each member during January of each year. There were no policies and procedures introduced at the arbitration hearing to say that if the \$800.00 is not expended by a member of the Union, the officer must return the money to the Department. There are policies that say once a piece of equipment/uniform is purchased, then it belongs to the Department and must be returned when the Officer leaves employment. But there are exceptions. Chief Tate testified that the badges of Officers often reflect sentimental value and it is not uncommon to permit an Officer who leaves the Department to keep his/her badge.

LYING

Second, was Officer [Name Redacted] lying when she said she returned the very jacket she purchased four years prior but had never used? Sales Clerk Peter Erickson

scanned the jacket tags and had trouble finding the jacket number. Eventually he found “that part number was discontinued”. Nevertheless, he took the jacket back and credited Officer [Name Redacted] for \$175.00. Streichers still sells the “5.1.1 4-in-1 Patrol Jacket” – the type that was on the Megan Manny invoice. But that jacket sells for \$249.99. Further, Megan Manny’s jacket was eventually found to be in the possession of Shakopee’s CSO Crystal Marks. Was anyone lying? It seems there was confusion on the part of sales clerk Peter Erickson when he tried to work with Officer [Name Redacted] so she could return the jacket. Was a mistake made by Mr. Erickson in taking the jacket back? Did he mistakenly put into the computer the wrong jacket number that was returned? The City admits it never could determine which jacket was returned. On the other hand, Officer [Name Redacted] from her first interview until her testimony at the arbitration hearing maintained the jacket returned was the precise jacket she had purchased four years earlier which had sat in her locker and then in her closet at home until returned four years later. The seamstress acknowledged to Capt. Robson “it’s hard to remember when it is a long time”, as to whether she had taken Police Department or CSO patches off a jacket that had been returned. The seamstress failed to appear for the hearing to testify, even though she had been placed under subpoena.

DISRESPECT

Finally, was Officer [Name Redacted] being disrespectful to Capt. Robson during the lengthy third interview? Officer [Name Redacted], who had never faced suspension in her entire career, but she had been reprimanded, was under great stress. It was clear to

her that Capt. Robson did not believe what she was saying. When Capt. Robson asked how she would “replay this thing” she responded “I’m gonna ask you”. There is no question she leaned forward and pointed her finger at him. Officer [Name Redacted] testified she recognized almost immediately that she had been “misinterpreted by the Capt.” [Post Hearing Brief of Union at 19] and that she wanted to “fix a misunderstanding but was advised not at that time by her Union attorney”. [Id.] She testified that what she meant was that if there was a next time she would contact Capt. Robson and ask him what she should do. While it may be interpreted two ways, it is clear from the testimony and the exhibits that she was neither disrespectful, intentionally deceptive or displaying lack of candor during her interviews with Capt. Robson.

USED EQUIPMENT

Finally, the City admits that it did not but needed to have clear policies on the distribution and use of used equipment. Chief Tate testified that there are now clear policies dealing with the use and distribution of such used equipment.

AWARD

Based on the testimony, exhibits and evidence introduced at the arbitration hearing, it is held that the City did not, by a preponderance of the evidence, show that Officer [Name Redacted] violated any Department directives or Code of Ethics. While it is clear to Officer [Name Redacted] at this time that she should not return any equipment for cash, she did not do so for any deceptive or lack of candor reasons. She testified honestly and truthfully to Capt. Robson in all of her interviews with him. Further she

was not being disrespectful to Capt. Robson, despite her intensity and passionate response, when she said “I’m gonna ask you”.

With regard to her use of the surplus equipment, i.e. two pair of BDU surplus pants, it is held that at the time she took the used equipment the policy and practice was confusing. While others were counseled, Officer [Name Redacted] was suspended, while other officers were given no consequences. Now there is a clear policy.

It is understandable why Capt. Robson and Chief Tate confronted with the facts of this case felt it necessary to launch an internal affairs investigation into this matter. But in light of the facts developed at the arbitration hearing, it is equally necessary to clear Officer [Name Redacted] name.

Based on the above reasoning, it is held that the one (1) day suspension is vacated and the disciplinary letter of January 20, 2011 will be removed from Officer [Name Redacted] file and destroyed. Officer [Name Redacted] will be reimbursed for the one (1) day suspension.

9/8/11

Date

Joseph L. Daly
Arbitrator