

IN THE MATTER OF THE ARBITRATION BETWEEN:

CITY OF ST. CLOUD

AND

**LAW ENFORCEMENT LABOR SERVICES LOCAL 33
(Ryan Priebe Grievance)**

BMS Case No. 15 PA 0088

OPINION AND AWARD OF ARBITRATOR

**Richard A. Beens
Arbitrator
1314 Westwood Hills Rd.
St. Louis Park, MN 55426**

APPEARANCES

For the Employer:

**Kirsten Luchen, Esq.
Asst. City Attorney
St. Cloud City Hall
400 2nd St. S.
St. Cloud, MN 56301**

For the Union:

**Scott A. Higbee, Esq.
Law Enforcement Labor Services, Inc.
327 York Avenue
St. Paul, MN 55130-4039**

**Date of Award:
July 3, 2015**

JURISDICTION

This arbitration arises pursuant to a collective bargaining agreement (“CBA”) between the City of St. Cloud, Minnesota, (“City” or “Employer”) and Law Enforcement Labor Services, Inc. (“Union”).¹ Officer Ryan Priebe (“Grievant”) is employed as a police officer by the City and a member of the Union.

The undersigned neutral arbitrator was selected by the parties to conduct a hearing and render a binding arbitration award. The hearing was held on June 16, 2015 in St. Cloud, Minnesota. The parties stipulated that the matter was properly before the arbitrator. Both parties were afforded the opportunity for the examination and cross-examination of witnesses and for the introduction of exhibits. Written closing arguments were submitted simultaneously on June 30, 2015. The record was then closed and the matter deemed submitted.

ISSUES

The parties agreed that the issues to be determined are:

- 1. Did the City of St. Cloud violate the Collective Bargaining Agreement by suspending Officer Ryan Priebe for two (2) days without just cause?*
- 2. If so, what is the appropriate remedy?*

FACTUAL BACKGROUND

The City of St. Cloud Police Department (“SCPD”) has approximately 100 licensed officers. All officers below the rank of Sergeant are represented by the Union.²

¹ Joint Exhibit 1.

² Ibid., Article IV.

Grievant Ryan Priebe has work for the SCPD as a patrol officer since November, 2006.

On the night of September 15-16, 2013 Grievant was patrolling in his regularly assigned southern area of the City, an area that includes St. Cloud State University. He customarily worked a 1700-0300 hours shift under the supervision of Sgt. Anne Whitson. However, on this occasion, he was on a 2300-0700 hour shift supervised by Sgt. Michael Koeniguer.

At 0053 on the early morning of September 16, 2013, St. Cloud 911 dispatchers received a report of an armed robbery from a University student.³ Clearly distraught, the student indicated that he had left the school library and was walking to his nearby apartment building about 20 minutes prior to the call. A dark SUV, which he thought to be a Jeep Cherokee, stopped in a roundabout as the victim was crossing the street. The driver exited the vehicle and asked if he had “some weed.” The victim said “no” and started sprinting away -- until he heard a shotgun cock. After stopping and turning around with raised hands, the victim was directed into the shadows of a nearby apartment building by the assailant. Once there, the victim’s wallet which contained his social security card, credit cards, driver’s license and a small amount of cash, was demanded and handed over to the gunman. The robber was described as follows: *“He was black, maybe Somali, and he had a mustache a small mustache, he was about five seven.”*⁴

The caller was adamant that officers not come to his area in uniform because the robber had threatened to kill him if he told anyone about the incident. He believed the gunman was still watching him. *“You can just come dressed up as something else, I*

³ Joint Exhibit 8. For reasons of privacy, I will not use the victim’s name and will simply refer to him as “student” or “victim.”

⁴ Ibid.

mean. I fucking pissed in my pants. You get fucking robbed and I'll tell you to relax...."⁵

At the dispatcher's suggestion, the victim agreed to have an officer contact him by phone.

Immediately after finishing his call with the victim, the dispatcher called Grievant, who was on patrol a few blocks away from the crime scene. The 911 dispatcher indicated, "*Complaint is only semi-cooperative.*"⁶ Then a brief summary of the crime and description of the assailant was relayed to Officer Priebe. Finally, the dispatcher indicated, "*The complainant is too scared to talk to anybody in person in uniform. He thinks that the male that pulled the shotgun on him may still be watching him. I'm not sure why, although he is scared to have police come to his address.*" Grievant was not informed the level of the victim's fear had caused loss of bladder control.

Grievant's phone call to the victim and the subsequent actions he either took or did not take lie at the heart of this grievance. It's importance warrants including a transcription of the entire call:⁷

[SOUND OF PHONE RINGING]

A Hello?

Q Hi. (Victim's name redacted)

A Yeah.

Q Hi. This is Officer Priebe, St. Cloud Police.

*[CHIMES]*⁸

⁵ Ibid.

⁶ Joint Exhibit 9.

⁷ Joint Exhibit 7.

⁸ The sound of chimes indicate either an out-going or incoming CHAT message on a computer located in Grievant's squad car. CHAT is an intradepartmental computer network that all on-duty patrol officers and shift supervisors are logged into. In addition to radio, it provides a second mode of communication among

A Hi.

Q What's goin' on?

[RADIO TRAFFIC]

A What? I got r-robbed tonight with a sawed off shotgun.

Q Okay. Where were you at?

A I was at the roundabout.

Q Okay. Which way were you goin'?

A I was going south.

Q South on?

A So I was on-on the -on the west side of the roundabout. One (sic) the west road over that road.

Q Okay. Where were you comin' from?

A I was comin' from the library.

Q Okay. And you were headin' home?

A Yeah.

Q Okay. What uh, what's the address that you live at?

A Um, it's [Redacted]

Q 'Kay

A [Victim's address Redacted.]

Q What number do you live in?

A [Redacted]

Q Okay. And then un, what time did this happen?

A Like 20 minutes ago.

Q 'Kay, And why don't you tell me what happened?

A I was walking back and I was walking over the -- I was just walking

officers and shift supervisors.

(indiscernible) the road and he drove by really slow and I was just walkin' across the cross-crosswalk and all the sudden he stopped and he got out of his car and I and I was walkin' away (indiscernible) and he said give me your wallet. He's like let me see you wallet and I'm like--and I just started running. And I heard the shot gun pump and I stopped and I said please don't shoot, please-please and I begged him not-not to shoot and he said just give me your wallet and I had my hands up in the air and he said put your hands down and walk with me. So I walked over and we went to the side of the building--to my apartment building. And he said I (indiscernible) not use this--he's like (indiscernible) I will use this I'm not afraid to use this like if you-if you say one word 'cause I'll know, I'm good with faces I know what you look like and I know-know where you live. He said if you say anything you-you're dead. I'll kill you. That's why I'm not--that's why I didn't wanna call the cops until now.

Q Okay. What uh, what kinda car was it?

A It was like a--had to be like a jeep or like a Cherokee (indiscernible) that, dark colored.

Q Was this the driver or--

A Yeah. He got out of the driver's seat. I'm pretty sure. I was (indiscernible)--yeah. He got out of the driver's seat.

Q Okay. And he was driving on University?

A Yeah (indiscernible) University.

Q So he was driving west on University Drive after the roundabout?

A Yeah.

Q So he left his jeep in the middle of the r-road?

A Yeah he did.

Q And he walked all the way down to your building?

A There might have been somebody else in the car that got in the driver's seat.

Q 'Kay.

A But he just w--he walked--he-he chased me across the street.

Q 'Kay. What did the shotgun look like?

A (indiscernible) it was a sawed off shotgun. That's all--I mean that's all I know.

Q Okay. How do you know that? Did you see it?

A Yeah. I saw him when I turned around.

Q 'Kay. You don't know what color it was?

A No I don't. He put it underneath his jacket once-once he got close to me.

[CHIMES]

A I can't--I can't have you drive around here though 'cause he's gonna know.

Q Well we just do normal routine patrol around here so...

A I'm really worried 'cause he's got my social sec--he's got my social security and my credit card.

Q What uh, what was he wearin'?

A He had like jeans, a hoodie, a dark hoodie. Could have had sweatpants on. I'm not sure.

Q 'Kay. And you were on the north side of your building? Or the south side?

A I was--was on the north side.

Q So right along University?

A I was crossing University going south.

Q I know but you were right along University when he took your stuff?

A Yeah. Yeah.

Q 'Kay. And then which way did he go?

A I don't know. I turned around 'cause I didn't wanna look back at him. But I'm sure he went back to his car. I don't know where they went though I didn't wanna look back. I was- I was scared. I mean that's never happened to me before.

Q Okay. Then where did you go?

A I just went inside my apartment. I was so scared (indiscernible) my - apartment's right there so... I'm sure he saw me walk in.

Q Okay. Can you describe him to me?

A He was like five-seven, five--maybe, you know five-seven, five-eight. He's black, curly hair--short curly hair. Um, small mustache.

[SHORT PAUSE]

Q 'Kay. So a black male, curly hair--

A Yeah.

Q How long?

A It was short.

Q And you said about five-seven?

A Yeah.

Q How old?
A Uh, he had to be at least 18 for sure. He's probably older than that. I don't even know.

Q 'Kay. And what did he take from ya?
A He took my wallet. That's it. That's all he took.

Q What was in your wallet?
A My wallet had--it had my social security card in it. It had my-- both of my debit cards but one of my debit cards didn't have any money on it.

Q 'Kay Your debit cards are---
A And then---

Q --- (coughs) from what bank?
A Bremer. Can-can I get it shut off please? Bremer.

Q Both of 'em are from Bremer?
A No. The other one's from TCF.

Q So a TCF debit card and a Bremer tem--debit card?
A Yeah.

Q And then what else?
A And it had my license--had my license. It had--I mean it had five dollars in it (indiscernible) and then it had uh, tryin' to think. I don't think I had anything else of like that was important in there.

Q Okay. Uh, what you're gonna need to do is get a hold of Bremer and TCF to shut your cards off. If you go online there should be phone numbers for both of 'em to shut off.
A I don't know-I don't know my PIN number though.

Q That's--you'll be able to call and talk to 'em and they'll shut 'em off for ya.
A The -the offices aren't open though tonight.

Q Right.
A That late?

Q You have to call and find out. I have no idea. So just Google TCF and Google Bremer and uh, call those numbers and they'll get 'em shot (sic) off.
A Okay. I don't know what to do.

Q Anything else you can think of that I need to know?

A *I can't--I mean if you catch him though he's gonna know.*

Q *Okay.*

A *He's gonna know who-who turned him in.*

Q *Yeah. But that's kinda how the robberies work.*

A *Yeah but I don't wanna get killed. I mean if he has to take my wallet then just let him take my wallet I mean.*

Q *Okay so---*

A *For me I---*

Q *So what would you like me to do then?*

A *I don't know. I mean I don't want him to take my money like---*

[*RADIO TRAFFIC*]

A *---I can't have him take that 'cause otherwise I'm screwed. I don't know obviously I don't want him runnin' around robbin' other people.*

Q *'Kay.*

A *I don't know. What do you think?*

Q *I can't tell you. I'm not you. So what time did you leave the library at St. Cloud State?*

A *Like 12:30.*

Q *At 12:30 you left there?*

A *Yeah.*

[*RADIO TRAFFIC*]

Q *Are you gonna be on camera there leaving?*

A *Maybe. I walked out the back do--south door.*

Q *'Kay. Where-where in the library were you?*

A *I was on the third floor.*

Q *'Kay. And you left at 12:30?*

A *Yeah. Around there (indiscernible) I have a gray sweatshirt on with gray sweatpants and a gray backpack.*

[*Questions and answers regarding victim identification redacted.*]

Q *'Kay. Would you recognize him if you saw him again?*

A Yeah. For sure.

Q Okay. You got a pen and paper to write down the case number?

A Hold on. Yeah.

[Case identifying information redacted.]

Q Um--

A Okay. Is that all I---

Q I'll get a report done and go ahead and get a hold of you banks and get your stuff shut off.

A You can do that for me?

Q No. You have to do that.

A Oh. Okay.

Q Okay?

A Alright. Alright bye.

[AUTOMATED VOICE INDICATING CALL ENDED]

Grievant's phone conversation with the victim ended at 0111 hours. Immediately thereafter, he was dispatched to cover a hit-and-run accident, which consumed another hour and a half of his shift. Sometime before the shift end at 0700 hours, Grievant dictated a narrative report containing all the information he obtained from the victim. At the end of the narrative, Grievant made the following recommendations:⁹

FOLLOW-UP INVESTIGATION NEEDED:

-- None

DISPOSITION:

-- Inactive

ROUTING:

RECORDS DIVISION: PLEASE FORWARD A COPY OF THIS REPORT TO:

-- Records

⁹ Joint Exhibit 7.

About a half hour before shift end, Supervisor, Sgt. Michael Koeniguer approached Grievant at headquarters and asked what had happen on the armed robbery call. He needed to know in order to complete the shift log. Up to that point Grievant had not communicated the results of his interview with the crime victim to anyone else in the department.¹⁰ Grievant told Koeniguer that, while he thought something had happened, he also believed there was more to victim's story -- perhaps a drug-deal gone bad. Koeniguer tended to agree, however, upon learning of Grievant's recommendations, he immediately overruled them. He filled out a PORT sheet,¹¹ re-activated the case, and ordered that CIU and CAPS be informed of the crime for follow-up investigation.¹²

Upon reviewing Grievant's response to the armed robbery case a month later, then Assistant Chief Susan Stowarski signed a complaint against Grievant and ordered an Internal Affairs investigation.¹³ Her complaint alleged the following violations of SCPD Policy #140 (Unsatisfactory Performance);

*"Unsatisfactory performance relating to the armed robbery investigation. Performance concerns over victim interview, communication with supervisor, report routing, required follow up and concern for victim. In-appropriate action."*¹⁴

The resulting internal affairs investigation was conducted by SCPD Sgt. Martin Sayer.

¹⁰ Although he had recorded the conversation with the victim and dictated a narrative report, neither were transcribed until sometime later. The narrative report was transcribed at 2053 hours on the same day and the phone conversation on October 10, 2013. (Joint Exhibit 7.)

¹¹ A PORT sheet is simply a cover sheet used when forwarding information elsewhere within the SCPD.

¹² CIU stands for Criminal Investigations Unit which is the investigatory arm of the SCPD. CAPS stands for Campus Area Police Service. CAPS is a specially designated three-person squad within CIU that had been created in August, 2013, approximately two months prior to the incident at issue. Partially funded by St. Cloud State University, the unit's purpose was to focus on crime and crime prevention within the college area.

¹³ Joint Exhibit 6.

¹⁴ Ibid.

After review of the original dispatcher transcripts,¹⁵ Grievant's victim interview and narrative,¹⁶ and his own interviews of Grievant, Whitson, Koeniguer, and the victim,¹⁷ Sgt. Sayer found the allegations to be sustained.¹⁸ SCPD Chief, William Blair Anderson, subsequently disciplined Grievant with a two-day suspension.¹⁹ The Union grieves the suspension on behalf of Officer Priebe, alleging that it is without just cause as required by the CBA or, in the alternative, that the punishment was excessive given Grievant's record.

APPLICABLE CONTRACT AND POLICY PROVISIONS

Article V - Management Rights²⁰

5.1 *It is recognized that, except as expressly stated herein, the City shall retain whatever rights and authority that are necessary for it to operate and direct the affairs of the City in all of its various aspects, including, but not limited to:*

.....

6) *To demote, suspend, discipline, or discharge employees for legitimate reasons.*

7) *To make and enforce reasonable rules and regulations.*

.....

Article VIII - Grievance Procedure²¹

8.1 h) **Discipline.** *The employer will discipline for just cause only.*

ST. CLOUD POLICE DEPARTMENT POLICY MANUAL²²

.....

140 **Unsatisfactory Performance:** *Members shall maintain sufficient competency to*

¹⁵ Joint Exhibits 8 and 9.

¹⁶ Joint Exhibit 7.

¹⁷ Joint Exhibits 11, 12, 13, and 15.

¹⁸ Joint Exhibit 16.

¹⁹ Joint Exhibit 4.

²⁰ Joint Exhibit 1.

²¹ Ibid.

²² Joint Exhibit 5.

properly perform their duties and assume the responsibilities of their positions. Member shall perform their duties in a manner which will maintain the highest standards of efficiency in carrying out the functions and objectives of the department. Unsatisfactory performance may be demonstrated by a lack of knowledge of the application of laws required to be enforced; an unwillingness or inability to perform assigned tasks, the failure to conform to work standards established for the member's rank, grade, or position; the failure to take appropriate action on the occasion of a crime, disorder, or other condition deserving police attention; or absence without leave. In addition to other indicia of unsatisfactory performance; repeated poor evaluations or a written record of repeated infractions of rules, regulations, directives or orders of the department.

OPINION AND AWARD

It is well established in labor arbitration that, where an employer's right to discipline an employee is limited by the requirement that any such action be for just cause, the employer has the burden of proof. Although there is a broad range of opinion regarding the nature of that burden, the majority of arbitrators apply a "preponderance of the evidence" standard. That standard will be applied here.

In determining the question of whether the employer acted with "just cause," the arbitrator is called upon to interpret the phrase as a term of art that is unique to collective bargaining agreements. While the arbitrator may refer to sources other than the contract for enlightenment as to the meaning of just cause, his essential role is to interpret the contract in determining whether a given action was proper.

A "just cause" consists of a number of substantive and procedural elements. A review of discipline for alleged employee misconduct requires an analysis of several factors. First, has the employer relied on a reasonable rule or policy as the basis for the disciplinary action? Second, was there prior notice to the employee, express or implied of the relevant rule or policy, and a warning about potential discipline? A third factor for

analysis is whether the disciplinary investigation was thoroughly conducted. Were statements and facts fully and fairly gathered without a predetermined conclusion? Finally, did the Grievants violate the work rule in question?

Did the City rely on a reasonable policy as the basis for disciplining Grievant? The short answer is, “Yes.” SCPD Policy 140 is, of necessity, a broad-brush, comprehensive work rule. No written rules could ever cover the endless variety of situations confronted by a patrol officer. Basic labor law dictates that an employer may discipline an employee for failure to meet reasonable work standards. And those standards can include generally known and reasonable work rules and expectations.²³

The overwhelming weight of testimony in this case demonstrates that SCPD employees are expected to treat the public, and crime victims in particular, with compassion and respect. Equal attention is expected to be given to both parts of the “Protect and Serve” police motto. Further, armed robberies are regarded as extremely serious crimes. Public safety demands that every effort be made to track down and apprehend those who use guns in the commission of crimes. Consequently, the SCPD expects that reports of armed robberies always warrant further investigation. I find each of these SCPD expectations to be reasonable.

Was the Grievant aware of the relevant rule or policy and the possibility of discipline in the event of a violation? Again, the short answer is “Yes.” When first hired, Officer Priebe received specific training in procedures to be followed when a robbery is

²³ *The Common Law of the Workplace*, National Academy of Arbitrators, Second Edition (2005), §6.5 (2) and (3).

reported.²⁴ Part of that training included supervisor and CIU notification of all robberies. Subsequent iterations of the same training task²⁵ specifically provide that, “*Primary officer will advise a supervisor as soon as practical about the felony investigation, and no later than the end of the shift.*” In addition, the training task states, “*All inactive robbery investigation (sic) will be routed to CIU for their information.*” Grievant did not deny awareness of these requirements. Second, he was well aware of the possibility of discipline for violation of Policy 140, since he received a written warning for violation of that policy, among others, in 2012.²⁶ Again, Grievant does not deny knowledge of possible discipline following a policy violation.

Was the disciplinary investigation thorough, fully and fairly gathering facts without a predetermined conclusion? Once again, the short answer is, “Yes.” The internal affairs investigator conducted interviews of everyone involved, Grievant, the victim, and both shift supervisors.²⁷ He obtained transcripts of the victim’s 911 call, the dispatcher’s call to Grievant, the conversation between Grievant and victim and the later CIU re-interview of the victim.²⁸ The final IA report fairly and accurately summarizes the investigation and sustains the allegation of a SCPD Policy 140 violation.²⁹ I can find no fault with the disciplinary investigation.

Did Grievant violate the work rules in question? The Employer argues that Priebe violated SCPD Policy 140 in three instances: first, he failed to build rapport with and

²⁴ Joint Exhibit 18.

²⁵ Joint Exhibit 27.

²⁶ Joint Exhibit 3.

²⁷ Joint Exhibits 11, 12, 13, and 15.

²⁸ Joint Exhibits 7, 8, 9, and 10.

²⁹ Joint Exhibit 16.

reassure the armed robbery victim; second, he did not confer with his shift supervisor in a timely manner; and, last, that he failed to route his initial reports to the CIU for further investigation.

While Grievant's taped interview with the victim may seem unremarkable to an untrained layman, the overwhelming testimony from Employer witnesses, ranging from Chief to Commander to shift Sergeants, deemed it inadequate. It is clear SCPD officers are instructed to build rapport with and to reassure crime victims. They are also instructed to make victims aware of available social and psychological services. This is done to insure their continued cooperation and to fulfill the "serve" part of the "protect and serve" police motto. While Grievant's interview gathered all the pertinent facts of the crime, nothing was done to demonstrate empathy or reassure the victim or to inform him of multiple available crime-victim services. Even Grievant acknowledged that he failed to perceive the high level of the victim's fear following the crime. In part, this was undoubtedly the result of the victim's refusal to be interviewed in person, therefore denying Priebe's ability to observe body language. The vast majority of crime victims are interviewed face-to-face. However, Grievant's coolness may be best explained by his gut feeling that the victim was not being wholly truthful -- that this may have been a drug-deal gone bad. While street-wise instincts are important policing tools, they are ultimately speculative in nature and were wrong in this instance. Further, they cannot become an excuse for abandoning established procedures.

While not a written rule, Grievant did not deny knowledge of the SCPD expectation that rapport be created with victims. Nor did he deny knowledge of the expectation that victims receive reassurance and be informed of available counseling

services. None of this was done in the course of Grievant's call to the victim.

While he sent out a minimal description of the crime and assailant via CHAT, there is no question Grievant did not discuss the details of the armed robbery with a supervisor until several hours after interviewing the victim. Even then, the conversation was initiated by the Shift Supervisor, Koeniguer. The Training Task currently in effect provides, "*Primary officer will advise a supervisor as soon as practical about the felony investigation, and no later than the end of the shift.*"³⁰ Grievant contends he would have reported the incident before the end of his shift, but other calls required his more immediate attention. Additionally, he contends it was just happenstance that the supervisor questioned him before he could initiate a the report. While all of that may well be true, it minimizes the urgency of immediate, timely, and complete police communication where an armed robber is still on the loose. The overwhelming testimony from Employer witnesses stressed the seriousness of armed robbery and the imperative of timely information sharing that could lead to the culprit's apprehension.³¹ Grievant's conduct again appears to have been driven by his erroneous suspicion that the victim was hiding some of the truth. Once again, it appears he allowed gut feelings to override established procedures.

Grievant acknowledges that he did not route his initial report of the armed robbery

³⁰ Joint Exhibit 27.

³¹ Joint Exhibits 18, 25 and 26. The armed robber was apprehended four days after the robbery. Upon learning that the Violent Offenders Task Force was going to execute a search warrant looking for guns, including a sawed-off shotgun, SCPD Officer Lang urged the officers to also look for the victim's wallet. She did so because she recalled Grievant's report of a sawed-off shotgun robbery which was forwarded to CIU by Sgt. Koeniguer. The wallet was discovered and the culprit was subsequently convicted of 1st Degree Aggravated Robbery. He is now serving a 42 month sentence in the St. Cloud Correctional Facility.

to CIU, as required by established procedure following a felony robbery.³² CIU only received the report due to the intervention of Sgt. Koeniguer. The fact that the report was, in fact, forwarded in a timely manner does not excuse Grievant's failure to act.

In summery, I find the SCPD had just cause to discipline Grievant.

Was the two-day suspension imposed on Grievant appropriate? While an arbitrator has the power to determine whether or not an employee's conduct warrants discipline, his discretion to substitute his own judgment regarding the appropriate penalty for management's is not unlimited. Rather, if an arbitrator is persuaded that the discipline imposed was within the bounds of reasonableness, he should not impose a lesser penalty. This is true even if the arbitrator would likely have imposed a different penalty in the first instance. On the other hand, if an arbitrator is persuaded the punishment imposed by management is beyond the bounds of reasonableness, he must conclude the employer exceeded its managerial prerogatives and impose a lesser penalty. In reviewing the discipline imposed on an employee, an arbitrator must consider and weigh all relevant factors including employee's length of service, his work record, and the seriousness of the misconduct.

The Union argues that a two-day suspension is excessive for an officer with Grievant's outstanding record. There is no question he is an exceptional and productive police officer. Priebe has consistently received Performance Evaluations that are at either "Meets Expectations" or "Exceeds Expectations" levels.³³ Typical comments in his evaluations include the following:

"Officer Priebe is probably the hardest working officer on my team. It starts with the work in his area. He works hard to take the calls in his beat. He takes the initiative to patrol streets and alleys where there have been issues with criminal

³² Joint Exhibits 18 and 27.

³³ Joint Exhibits 21, 22, 23, and 24.

activity. When other officers put out information on people that they are looking for in the muster folder, Officer Priebe pays attention and goes out looking for wanted people and vehicles and often is responsible for their apprehension.”³⁴

and

*“Officer Priebe is one of the most consistent, proactive and productive working officers in the organization. His initiative and motivation are exemplary. His ability to get involved and work a case to a resolution is of high quality and quantity. He is a good team player, ---”*³⁵

Nevertheless, Grievant has received two prior written warnings, both involving similar, atypical lapses in judgment.³⁶ Chief Anderson testified that Grievant’s length of service, prior disciplines and high performance evaluations were all taken into consideration when giving the suspension. More importantly, Chief Anderson articulated an enlightened view of discipline, a view endorsed by the National Academy of Arbitrators:

*“Unless otherwise agreed, discipline for all but the most serious offenses must be imposed in gradually increasing levels. The primary object of discipline is to correct rather than to punish.” (Emphasis added)*³⁷

Progressive discipline was aptly applied in this case. As articulated by the Chief, it’s goal was to make an already good policeman even better in the future.

While this case appears to involve an atypical lapse of judgment by Grievant, I see no compelling reason to interfere with Chief Anderson’s judgment. He disciplined Grievant progressively and based on just cause -- fully in compliance with the CBA.

It is my hope that Grievant will take these teaching moments to heart. Overall, he

³⁴ Joint Exhibit 21.

³⁵ Joint Exhibit 24.

³⁶ Joint Exhibits 2 and 3.

³⁷ *The Common Law of the Workplace*, National Academy of Arbitrators, Second Edition (2005), §6.7 (3) (a).

has given outstanding service to his department and community. There is no reason that he should not continue to be a stellar addition to the SCPD.

AWARD

The grievance is DENIED.

Dated: _____

Richard A. Beens, Arbitrator