

**STATE OF MINNESOTA**  
**BUREAU OF MEDIATION SERVICES**  
**IN THE MATTER OF GRIEVANCE ARBITRATION BETWEEN**

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CITY OF LAKEVILLE, MINNESOTA,

EMPLOYER,

-and-

LAW ENFORCEMENT LABOR SERVICES, INC

UNION.

ARBITRATOR'S AWARD  
BMS Case NO. 15PA0436  
DISCIPLINARY ACTION

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ARBITRATOR:	Rolland C. Toenges
DATE OF TERMINATION:	November 15, 2014
DATE ARBITRATOR NOTIFIED OF SELECTION:	March 16, 2015
DATE OF HEARING:	July 21 & 22, 2015
DATE OF POST HARING BRIEFS:	August 21, 2015
DATE OF AWARD	September 21, 2015

**ADVOCATES**

**FOR THE EMPLOYER:**

Joan M. Quade, Attorney  
Barma. Guzy & Steffen, Ltd.  
200 Coon Rapids Boulevard, Suite 400  
Minneapolis, MN 55433-5894

**FOR THE UNION:**

Scott A. Higbee, Attorney  
Law Enforcement Labor Services  
327 York Avenue  
St. Paul, MN 55130-4090

**ISSUE**

**Does the Employer have Just Cause for termination and if not, what is the appropriate remedy?**

**WITNESSES**

Jeff Long, Chief of Police  
Jason Polinske, Police Lieutenant  
Jerry Cziok, Investigator  
Brad Paulson, Police Sergeant  
David Watson, Senior Detective  
Sandy Thoeny, Police Officer  
Jay Castonguay, Sergeant  
Gary Swenson, BCA Official  
Keith Smith, Texas Investigator  
Thomas Stewart, Police Officer

Rick Bussler, Police Officer/Griev.

**ALSO PRESENT**

Shannon Severson, Paralegal  
Cindi Joosten, Human Resources Manager

**COURT REPORTER**

Sandra Burch, Tollefsrud Reporting, LLC.

**JURISDICTION**

The instant matter came on for hearing pursuant to an unresolved grievance concerning the termination of Police Officer Rick Bussler (Grievant). The Parties have negotiated a Collective Bargaining Agreement setting forth certain terms and conditions of employment for years 2014 and 2015. Said Agreement contains **Article 7, Employee Rights – Grievance Procedure**. Relevant provisions of this Article are as follows:

7.1. DEFINITION OF GRIEVANCE.

A grievance is defined as a dispute or disagreement as to the interpretation or application of the specific terms and conditions of this Agreement.

#### 7.4. 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 "Arbitration Roster Rules" established by the Bureau of Mediation Services.

#### 7.5. ARBITRATOR'S AUTHORITY.

- a). The arbitrator shall have no right to amend, modify, nullify, ignore, add to or subtract from the terms and conditions of this Agreement. The arbitrator shall consider and decide only the specific issue(s) submitted in writing by the Employer and the Union, and shall have no authority to make a decision on any other issue not so submitted.
- b.). The arbitrator shall be without power to make a decision contrary to, or inconsistent with, or modifying or varying in any way the application of laws, rules, or regulations having the force and effect of law. The arbitrator's decision shall be submitted in writing within thirty (30) days following close of the hearing or the submission of briefs by the parties, whichever be later, unless the parties agree to an extension. The decision shall be binding on both the Employer and the Union and shall be based solely on the arbitrator's interpretation or application of the express terms of this Agreement and to the facts of the grievance presented.
- c.). The fees and expenses for the arbitrator's services and proceedings shall be borne equally by the Employer and the Union provided that each party shall be responsible for compensating its own representatives and witnesses. If either party desires a verbatim record of the proceedings it may cause such a record to be made, providing it pays for the record. If both parties desire a verbatim record of the proceedings, the cost shall be shared equally.

Said Agreement also contains **Article 10, Discipline**. Relevant provisions of this Article are as follows:

- 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
  - e. Discharge
- 10.2. Suspensions, demotions and discharges will be in written form.
- 10.6. Discharges will be preceded by a five (5) day suspension without pay.
- 10.7. Employees will not be questioned concerning an investigation of disciplinary action unless the employee has been given an opportunity to have a Union representative present at such questioning.
- 10.8. Grievances relating to this Article shall be initiated by the Union in Step 3 of the grievance procedure under Article 7.

In accordance with the above referenced provisions, the Union filed a Step 3 grievance. The Grievance having been denied by the Employer brings the matter before the instant arbitration proceeding.

The Parties selected Rolland C. Toenges to arbitrate the issue in dispute and bring resolution to the matter.

Arbitration of the instant matter is being conducted in accordance with the provisions of the Minnesota Public Employment Labor Relations Act, as amended, 179A.01 – 179A.30 (PELRA) and the Collective Bargaining Agreement between the Parties.

A hearing on the issue at impasse was conducted on July 21 and 22, 2015 in the offices of The City of Lakeville, Minnesota. The Parties were afforded full

opportunity to present evidence, testimony and argument bearing on the matter at impasse. The Parties jointly submitted a voluminous binder into evidence, containing documentation relevant to the matter in dispute. Witnesses were sworn under oath and were subject to direct and cross-examination.

A verbatim record was made of the hearing with a copy provided to each Party and to the Arbitrator. The Parties agreed to submit Post Hearing Briefs on or before August 21, 2015. Both Parties submitted extensive Post Hearing Briefs received on August 21, 2015. The hearing was held open pending receipt of any reply briefs. Being none, the hearing was closed on August 28, 2015.

### **BACKGROUND**

The City of Lakeville (Employer) is located in Dakota County Minnesota. The City has a population of approximately 50,000 residents. The Employer provides traditional city government services, including law enforcement. The Grievant at issue, in the instant matter, was employed as a Police Officer in the City of Lakeville Police Department.

Law Enforcement Labor Services, Inc. (Union) is the certified exclusive representative for the Employers non-supervisory law enforcement personnel.

The Grievant was employed as a police officer with the City of Lakeville for about seventeen years. On November 10, 2014, the City gave the Grievant notice of discharge on the grounds that he released active investigative information to the media without the required authorization. Further, that he was dishonest when asked whether he had released the information.

The City policy prohibits release of such information without authorization of the Police Chief. Release of such information can also be a violation of law. Minnesota Statutes provide that release of active investigation data without authorization is a crime and constitutes just cause for discharge of a public employee.

In addition to considerable experience as a police officer, the Grievant also has considerable experienced in communications media as a writer and reporter. His has a college degree in Mass Communications and has worked for newspapers and television as a writer and reporter. The Grievant currently operates his own business (Bussler Publishing, Inc.), publishing weekly newspapers in southern Minnesota Communities. While employed as a Police Officer with the City of Lakeville, he has also performed some media work for the City.<sup>1</sup>

During the past year there have been high profile crime investigations taking place in the City. In two instances, the media prematurely broadcast details of the investigations while the investigations were still underway. The information broadcast by the media could not have been known without information from someone involved in the investigation or having knowledge of it by being a member of the Police Department.

The City conducted an internal investigation and employed an outside investigator to determine how the information had been given to the media. From the results of the investigation, the City determined the Grievant was the media source and discharged him. The Grievant has appealed his termination to arbitration. The dispute is now before the instant arbitration proceeding for resolution.

### **EXHIBITS**

#### **JOINT EXHIBITS:**

- J-1. Collective Bargaining Agreement Between City of Lakeville and Law Enforcement Labor Services, Inc. covering Police Officers, 01/01/2014 – 12/31/15.
- J-2. Organizational Chart of City of Lakeville Police Department.

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<sup>1</sup> Union Exhibit #2.

J-3. City of Lakeville Police Officer Job Description.

J-4. Internal Affairs Investigation regarding Media Leak – Chief Long.

J-5. Internal Affairs Investigation regarding Media Leak – Lt. Polinski.

J-6. Discipline Notice and Summary of Allegations to Grievant.

J-7. LawGistic Investigation Report – Investigator Jerry R. Cziok.

- a. Statement of Sergeant Brad Paulson.
- b. Statement of Detective Dave Watson.
- c. Statement of Sergeant Jay Castonguay.
- d. Statement of Officer Sandy Thoeny.
- e. Statement of Officer Rick Bussler (unsigned).

J-8. Press Release/News Report.

J-9. Emails Regarding Media Leak and Source.

J-10. Cell Phone Records volunteered by various Officers.

J-11. Photos of Crime Scene, Police Department Facility and Grounds.

J-12. Internal Affairs Investigation Regarding Sick Time of Grievant and a Statement by the Grievant.

J-13. Coaching of Grievant on prior Media Incident and Media Article Quoting Grievant.

J-14. Lakeville Police Department Code of Ethics, Order 103, 104 and 105.

- J-15.
  - a. Comprehensive Law Enforcement Data, Minn. Stat. 13.82
  - b. Misdemeanor to Violate Chapter, Minn. Stat. 13.09.
  - c. Willful violation by Public Employee constitutes just cause for suspension or dismissal.
  
- J-16. Notice of Intent to Terminate Grievant.
  
- J-17. Termination Letter to Grievant.
  
- J-18. Videos from Media Broadcast.
  
- J-19.
  - a. Linked In excerpts for Grievant.
  - b. Linked In excerpts for Wasserman.
  
- J-20. Grievant's Employment, incident history and relevant events with Lakeville Police Department
  
- J-21. Grievant's Personnel Record with Lakeville Police Department.
  
- J-22. Memo, July 21, 2015, RE: One More Case, AOA Homicide - Paulson

UNION EXHIBITS:

- U-1. Grievant's Resume.
  
- U-2. Grievant's Change in Squad Assignment during 2014l

**POSTION OF THE PARTIES**

**The Employer supports its position with the following:**

- The Grievant released active investigative information to the media without authorization.
- The Grievant was dishonest when asked about it by his supervisor.
- The Grievant's conduct not only violated Police Department Policy, but also Minnesota Law, which make his conduct a crime and just cause for termination.
- The Grievant has extensive contacts with the media having worked as a media writer and reporter.
- The Grievant's extensive media background includes both newsprint and Television.
- The Grievant's educational background includes specialized training in media, having a college degree in Mass Communications.
- In 2009, the Grievant incorporated Bussler Publishing, Inc. and purchased newspapers in outstate areas.
- The Grievant has published a book and did a TV cable show for the City of Lakeville.
- The City of Lakeville has a clear policy that Officers are not to talk to the media without authorization and they cannot disclose information during a pending investigation.
- In January 2014, the Grievant spoke to the Press without permission regarding a fatal car crash.
- Following the January 2014 car crash incident, the Grievant was coached by the Police Chief to not speak with the Press again without permission and was advised of the policy again.
- Upon the discovery of a crime scene in May of 2014, the media had detailed information quickly after the discovery and had a news helicopter circling overhead within 45 minutes.

- The extensive and detailed information had by the Press hindered the investigation, which remains unsolved today.
- The Grievant acknowledges having talked to the Press the same day, but would not release his phone record.
- In August 2014, a major crime investigation and apprehension situation took place, with the Press again having detailed information and broadcasting it while the investigation and arrest was underway.
- While the Press identified the source of the information as a Police source, it was not possible to obtain anything more specific from the Press.
- The Grievant was familiar with the investigation and pending arrest, having attended a briefing and through information from a co-worker.
- The Grievant acknowledges having had two phone conversations with the Press on the day that the investigation and arrest took place but would not release his phone record.
- The Grievant is an acknowledged social and professional friend of the reporter that had the unauthorized information in both the May and August 2014 incidents
- Although the Grievant denies being the source of the unauthorized information to the Press he acknowledges telling the Press that “something big was going on.”
- The untimely access to the information by the Press was of great concern to the several law enforcement agencies involved, as it could jeopardize the integrity of the investigation and compromise the safety of those involved in the arrest.
- These incidents have created a trust issue between other law enforcement agencies and the Lakeville Police Department, with concern that Lakeville cannot be trusted to maintain proper control of information. This matter of trust can jeopardize future situations where the agencies need to work cooperatively.

- Many Officers volunteered their phone records in response to the Employers efforts to determine how the Press obtained the unauthorized information, however, the Grievant refused to allow review of his phone record.
- A private investigator, hired to conduct an independent internal investigation into the matter, concluded that it was the Grievant who was responsible for the Press having the unauthorized information.
- The private investigator found the Grievant deceptive, lacking memory of important details and facts.
- The investigator found the Grievant had difficulty remembering the Policy on release of information, even though he had been coached on it in January.
- All witnesses were clear on the Policy regarding release of information and understood the reasons for the Policy and supported it.
- Through the Grievant's actions he has lost trust with the Lakeville Police Department, other cooperating law enforcement agencies and with fellow officers.
- Termination of the Grievant is the appropriate remedy. He is no longer a trusted and acceptable member of the Lakeville Police Department and

**THE UNION SUPPORTS ITS POSITION WITH THE FOLLOWING:**

- The Grievant unequivocally denies the charges.
- The Employer's evidence is entirely circumstantial.
- Discharge has been fairly characterized as the industrial equivalent of capital punishment.
- There is no overstating the impact of discharge on an employee.
- The Employer is thus charged with a weighty burden in proving that it had just cause to discharge the Grievant.
- The Grievant will in all likelihood be unable to find future employment in law enforcement.
- The Employer's investigation is seriously flawed.
- The Employer has failed to carry its burden of proof.

- The Union contends that the discharge was without just cause.
- The Union contends that the Grievant should be reinstated with back pay.
- The Grievant was not the source of the Press having the unauthorized data.
- The Press did not identify the Grievant as the source.
- The Press has a number of ways of obtaining information.
- In reference to the “Seven Tests” for just cause, the Union contends the following factors must be considered:
  1. The Grievants’s lengthy and valuable service to the Employer.
  2. The lack of any significant discipline against the Grievant.
  3. A reasonable assumption does not satisfy the necessary burden of proof.
  4. There is no direct evidence connecting the Grievant to the leak of information.
  5. There is no clearly established timeline as to the sequence of events.
  6. The Employer’s investigator did not appear to make any effort to establish a time line to resolve conflicts in the evidence.
  7. Without a fixed time line of who knew what and when, it is impossible to make a logical analysis of who might have released information.
  8. The Employer’s investigator made no effort to actually establish who attended the briefing where information on the cold case arrest was disseminated.
  9. The Employer is not justified in concluding only those five officers who attended the briefing might be in a position to have leaked the information.
  10. The Grievant acted reasonably when not interpreting his telephone contacts with the reporter as ”reaching out to the reporter.”
  11. The Police Chief, in referring to the investigation as a Criminal Investigation, must accept that in doing so he was a discouraging officer with information from coming forward.

12. The Union has concern that the Employer's investigator was hired simply to rubber stamp the Employer's conclusions, rather than conduct an independent investigation.
13. The investigation would have better creditability had the Employer hired an outside agency to conduct the investigation, rather than choosing a social acquaintance of the Chief.
14. The Employer's investigator was provided a schedule of who to interview and did not interview any witness who had not been selected by the Employer.
15. Considering the pending cold case arrest was being discussed within the Lakeville Police Department, prior to the morning of August 12, should have raised serious concern about the underlying assumption that only those officers present at the briefing on August 12 were aware of the details.
16. The egregious shortcoming of the investigator's investigation was his failure to even contact the news reporter.
17. The investigator accepted the Employer's conclusion that the leak came from within the agency and did not investigate whether the leak might have come from another agency.
18. A fair investigation must consider exculpatory as well as incriminating evidence.
19. The Employer's investigator plainly violated the established principles of due process by failing to interview key witnesses and follow up on exculpatory evidence.
20. It is unfair for the Employer to claim that the Grievant was untruthful in an earlier matter and allow the allegation to impact the instant matter.
21. It is also unfair for the Employer to inject evidence of sick leave abuse into the instant matter, since no disciplinary action was ever taken.
22. There is no evidence in the record that factually connects the Grievant to the leak of information at issue, only that he may have informed the reporter that a significant case was in the works.

- The Grievant did not disclose the details of the May 15<sup>th</sup> and August 12, 2014 matters to the media and since the Employer has failed to take proper steps to develop information it sought, the Grievant should be reinstated and awarded back pay.

### **DISCUSSION**

The issue to be determined in the instant case is whether it was the Grievant who provided the media with unauthorized information broadcast prematurely, and if so, what is the appropriate remedy?

The charges against the Grievant are based on two incidents where unauthorized information was provided to the media. These two incidents involved very serious crime situations where premature release of the information jeopardized an ongoing investigation, created mistrust between cooperating law enforcement agencies and preempted timely communications with the families of victims.

The evidence supporting the Employers case is mostly circumstantial. The media, as is their practice, will not voluntarily disclose the source of their information. There is no witness testimony that actually saw or heard the Grievant communicating the unauthorized information to the media. However, there is clear and convincing evidence supporting the charges against the Grievant. The record provides sufficient proof that it is substantially more likely than not that it was the Grievant who leaked the information to the media.

The record supporting this matter is very thorough and extensive. It will not be discussed here in further detail, as the investigations are ongoing.

### **FINDINGS**

- Criminal Investigative Data collected while a matter is under investigation, such as in the instant case, is nonpublic. Willful unauthorized release of such

data by a public employee constitutes just cause for disciplinary action, including dismissal.<sup>2</sup>

- The Police Chief specifically coached the Grievant earlier regarding Department Policy that requires prior authorization from the Chief.<sup>3</sup>
- The Grievant possessed the unauthorized data given to the Press via direct knowledge or through information he obtained from a co-worker.<sup>4</sup>
- The Grievant acknowledges having a social and professional relationship with the reporter who broadcast the unauthorized data.<sup>5</sup>
- The reporter who broadcast the unauthorized data described it as exclusive and from a police source.<sup>6</sup>
- The Grievant acknowledges having one or more phone conversation with said reporter on the occasions when the unauthorized information was prematurely broadcast.<sup>7</sup>
- The Grievant acknowledges telling the reporter that “something big was going on.”<sup>8</sup>

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<sup>2</sup> Minn. Stat.13.09, 13.82.

<sup>3</sup> Joint Exhibit #13 and testimony of Chief Long

<sup>4</sup> Testimony of Grievant and Officer Thoney.

<sup>5</sup> Testimony of Grievant.

<sup>6</sup> Joint Exhibit #8 (Video of KSTP broadcasts placed in evidence).

<sup>7</sup> Testimony of Grievant.

<sup>8</sup> Testimony of Grievant.

- The testimony of the other witnesses was that none knew the reporter at issue and had no contact with the reporter.<sup>9</sup>
- While others provided their phone records to establish that they had not been in contact with the Press, the Grievant refused to allow review of his phone records.
- The Grievant's contention that he did not interpret "reaching out to the media" to include telephone contacts with the media constitutes a play on words and is not a creditable alibi.
- All witnesses, including the Grievant, testified they understand and support the Policy on release of information.
- All witnesses, including the Grievant, testified to the adverse consequences that premature release of information can have on officer safety and the integrity of an investigation.
- Argument regarding whether the Grievant was present at the August 12 briefing, or obtained the information from another officer is irrelevant, for either way he had the unauthorized information obtained by the media.
- Although the Employer's investigation might have been more thorough, the record shows it did include all known witnesses that could reasonably be expected to provide relevant information regarding the matter at issue.
- It is clear from the record that the unauthorized information obtained by the media did not come from an outside agency and could only come from a member of the Lakeville Police Department with knowledge of the matter.

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<sup>9</sup> Testimony of all witnesses except Grievant.

- The record shows that the unauthorized information released to the media has caused a breach of confidence between other agencies participating in the investigation and the Lakeville Police Department.
- The record shows that the unauthorized information released to the media caused a breach in the ability of an affected outside agency to appropriately communicate with families of the victim.
- The Grievant's testimony, when compared to the veracity of the other witnesses, is least creditable.
- The totality of the evidence in the record is sufficiently clear and convincing to support the charges against the Grievant and constitutes just cause for his discharge.
- The testimony of witnesses establishes that their trust and confidence in the Grievance as a co-worker has been irreparably damaged and he can no longer function as an effective member of the Lakeville Police Department.

**AWARD**

**The grievance is denied.**

**The evidence supporting the charges against the Grievant, although largely circumstantial is clear and convincing.**

**In accordance with the evidence presented, the terms and conditions of the Collective Bargaining Agreement, Lakeville Police Department Policy and Minnesota Statutes, there is just cause for termination of the Grievant.**

**CONCLUSION**

The Parties are commended on the professional and thorough manner with which they presented their respective cases. It has been a pleasure to be of assistance in resolving this grievance matter.

Issued this 21st day of September 2015 at Edina, Minnesota.

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Rolland C. Toenges, Arbitrator







