IN THE MATTER OF ARBITRATION BETWEEN

STATE OF MINNESOTA, DEPARTMENT OF NATURAL RESOURCES,	)	**ARBITRATION AWARD**
Employer,	)	
and	)	**HANSEN DISCHARGE GRIEVANCE**
RICHARD HANSEN,	)	
Individual Grievant.	)	**BMS Case No. 07-VP-0442**

Arbitrator:	Stephen F. Befort
Hearing Date:	January 30, 2007
Date of decision:	March 2, 2007
	APPEARANCES
For the Grievant:	Gregg M. Corwin
For the Employer:	Paul A. Larson

INTRODUCTION

Lieutenant Richard Hansen brings this grievance pursuant to the Dispute Resolution Procedure provided in Chapter 12 of the Commissioner's Plan for permanent classified state employees who are not covered by a collective bargaining agreement. Minn. Stat. § 43A.33, subd. 3. Hansen claims that the State of Minnesota (Employer) violated the provisions of the Commissioner's Plan by discharging Hansen without just cause. The grievance proceeded to an arbitration hearing at which the parties were

afforded the opportunity to present evidence through the testimony of witnesses and the introduction of exhibits. The parties decided not to submit post-hearing briefs.

ISSUES

1. Did the Employer have just cause when the grievant was terminated from employment on October 13, 2006?

2. If not, what is the appropriate remedy?

FACTUAL BACKGROUND

Lieutenant Richard Hansen has worked for the State of Minnesota Department of Natural Resources (DNR) for the past eighteen years. As a Conservation Officer, Hansen was a sworn peace officer charged with public safety and environmental protection responsibilities. At the time of his discharge, Hansen was a District Supervisor assigned to the Department's Duluth District with a home office in Cloquet, Minnesota.

The incident leading to Hansen's termination took place on May 17, 2006. Shortly after 2:00 p.m. on that day, the St. Louis County Sheriff's Office dispatched a call for help via car radio indicating that a man was in the water of Mirror Lake north of Duluth. This was a very serious situation since the water temperature of Mirror Lake at that time was only 47 degrees Fahrenheit. Timothy Smalley, a water safety expert employed by the DNR Boat and Water Safety Division, testified that an individual submerged in 47 degree water would be in significant peril of death after one hour.

Conservation Officer Dale Ebel was approximately four miles from Mirror Lake when he heard the dispatch, and at 2:11 p.m. he replied by radio that he would respond to the call with a boat. Ebel drove to his home, approximately a mile away, and hitched a boat to his pick-up truck. He then proceeded to drive to Mirror Lake with his emergency

lights activated. The St. Louis County Sheriff's Office also dispatched Deputy Abernathy to Mirror Lake.

Lieutenant Richard Hansen, Ebel's supervisor, also heard the radio message as he was driving north from Cloquet. Hansen had left work early that day, planning to drive to his home, switch from his Division of Enforcement truck to his personal vehicle, and then transport his daughter to a counseling session scheduled for 4:00 p.m. in Duluth. Hansen was officially on duty until 3:00 p.m., and he had not taken leave time for the early departure. Hansen's daughter was having significant emotional problems at the time, some of which were attributable to Hansen's divorce. Hansen had talked her into seeing a counselor, and he wanted to make sure that she made it to this first counseling session.

Hansen testified at the hearing that as he was driving north he had not made up his mind about responding to the Mirror Lake call. He testified that he wanted to help, but felt that he could not let down his daughter by missing the appointment. Shortly before the turn-off to Mirror Lake, Deputy Abernathy passed Hansen with his emergency lights flashing. Assuming that Ebel and his boat were already at Mirror Lake, Hansen concluded that Ebel and Abernathy could handle the call and that his assistance was not needed.

At about 2:20 p.m., Ebel and Hansen arrived simultaneously at the intersection of LaVaque Road and Fish Lake Road, which is approximately two miles from Mirror Lake. The two drivers made eye contact, and then proceeded in opposite directions. Ebel drove east toward Mirror Lake, while Hansen turned to the west and proceeded to his home. Ebel testified that he was puzzled that Hansen did not follow him to Mirror Lake and

twice called Hansen by radio on the DNR Tactical Channel (channel six). Hansen did not reply to the calls.

When Ebel arrived at Mirror Lake, he was met by Deputy Abernathy. The two officers launched the boat and succeeded in pulling the man out of the water at 2:24 p.m. Ebel testified that the rescue was difficult because the victim was so cold that he could not assist in getting into the boat. The officers drove the boat to the public access where a rescue unit was waiting to transport the victim. The victim had been in the water for about 45 minutes, but he recovered without further incident.

Hansen called his supervisor, Captain Ken Soring, upon arriving at home. He told Soring that he had left work early to deal with a "meltdown" being experienced by his daughter. Hansen also explained that he had encountered Ebel at the intersection, and because of the bad blood between them he thought it likely that Ebel would lodge a complaint against Hansen. Hansen also expressed the belief that Ebel would not have welcomed his assistance on the rescue effort. Soring responded that he "understood" Hansen's situation and that it appeared that the Mirror Lake emergency had been adequately staffed.

Captain Soring's testimony at the arbitration hearing, however, expressed a very different view. Soring testified that he had assumed at the time of the May 17 telephone conversation that Hansen was reacting to an emergency event rather than simply leaving work early to make a pre-arranged appointment. Soring also testified that, once he became aware of all of the facts surrounding the Mirror Lake incident, it became clear that Hansen had been in a position to be the first responder to arrive at Mirror Lake and that Hansen had erred in not acting accordingly. Finally, Soring offered the opinion that

Hansen could have assisted in the rescue and still had plenty of time to make the appointment in Duluth.

Ebel contacted Soring a day or two after the incident to discuss the matter of Hansen's failure to assist in the rescue. Ebel eventually decided to lodge a formal complaint against Hansen, alleging that Hansen engaged in conduct unbecoming an officer by failing to assist in the rescue operation. Carman Bradach, a Human Resources Personnel Officer stationed in Grand Rapids, was assigned to undertake an investigation. She interviewed Ebel, Hansen, and Soring, and prepared a written report of her findings. During his interview with Bradach, Hansen acknowledged that he probably would have attempted to communicate with any conservation officer other than Ebel in the circumstances in play at the LaVaque Road and Fish Lake Road intersection, but that the ill feelings between the two officers made him reluctant to do so in that instance.

Colonel Mike Hamm, Chief Conservation Officer for the Division of Enforcement, reviewed the report and made the formal decision to terminate Hansen's employment. In a termination letter to Hansen dated October 12, 26, Colonel Hamm expressed his rationale as follows:

> Your failure to respond to what was a life or death situation is unacceptable. Further, your failure to support other law enforcement officers, particularly your own subordinate officer, in an emergency situation cannot be tolerated. You allowed your personal relationship with Officer Ebel to interfere with your professional judgment, potentially risking the lives of the individual in the water as well as the responding officers. This makes you a liability to yourself, your fellow officers and to the public that I cannot accept.

Hansen has appealed his discharge through the Dispute Resolution Procedure of the Commissioner's Plan for classified employees with permanent status in State service.

The appeal has now proceeded to arbitration in accordance with the provisions of Minn. Stat. § 43A.33, subd. 3.

POSITIONS OF THE PARTIES

A. Employer's Position

The Employer contends that it had just cause to terminate Hansen's employment. The Employer maintains that Hansen's actions on May 17, 2006 failed to fulfill the core public safety responsibilities of the conservation officer position. Although Hansen was in a position to be the first responder to a serious water safety emergency, he put the lives of the victim and his fellow officers in jeopardy by failing to respond to the call for duty. He also exhibited a serious lack of judgment by failing to communicate with Ebel to determine staffing needs and to explain his personal circumstances. In the end, there was an adequate amount of time for Hansen to assist in the rescue and still be in a position to transport his daughter to her appointment.

B. Employee Position

Hansen argues that he was not derelict of duty with respect to the Mirror Lake incident because Ebel and Abernathy provided sufficient staffing to accomplish the rescue at hand. Hansen acknowledges that he should have communicated with Ebel concerning the incident, although he denies receiving any radio calls from Ebel at the time. In any event, Hansen argues that discharge is too severe of a sanction under the circumstances. Hansen claims that his actions on the day in question were influenced by a sincere concern for the emotional needs of his daughter. In addition, Ebel's animosity toward Hansen both contributed to the events in question and exaggerated the degree of discipline ultimately imposed.

DISCUSSION AND OPINION

The arbitral review of an employment termination decision typically involves two distinct steps. The first step concerns whether the Employer has submitted sufficient proof to establish that the employee actually engaged in the alleged misconduct or other behavior warranting discipline. If that proof is established by a preponderance of the evidence, the remaining question is whether the level of discipline imposed is appropriate in light of all of the relevant circumstances. *See* ELKOURI & ELKOURI, HOW ARBITRATION WORKS 948 (6th ed. 2003).

A. The Alleged Misconduct

The Employer claims that Hansen engaged in two types of misconduct in conjunction with the events of May 17, 2006. The Employer first alleges that Hansen failed to fulfill his duties as a peace officer by not responding to the water safety emergency at Mirror Lake. Hansen acknowledges that he did not respond to the call for help, but contends that the call was adequately staffed by others and that his participation was not needed. Second, the Employer alleges that Hansen failed to communicate with fellow peace officers with respect to the Mirror Lake incident, including a failure to reply to two radio calls from Ebel. Hansen denies receiving any radio messages from Ebel concerning the incident, but acknowledges that he should have communicated with Ebel upon encountering him at the intersection.

Viewing the record as a whole, I believe that the Employer has adequately established the existence of the alleged misconduct. With respect to the response issue, the Employer has a legitimate expectation that conservation officers will respond to emergency situation in a manner consistent with public safety needs. In this instance, the

boating victim in Mirror Lake was in a life or death emergency situation. Hansen was in a position to be a first responder to the emergency, yet he chose not to respond even though he did not know how many individuals were in the water or for how long. Under the circumstances, Hansen was not in a position to know whether or not his assistance was needed to affect a successful rescue. The fact that the rescue was successful does not obviate the fact that the operation could have gone wrong without adequate staffing. Hansen's unilateral decision not to assist under the circumstances falls short of the Department's crucial public safety mission.

In terms of the communication issue, Hansen acknowledges that he should have communicated with Ebel concerning the Mirror Lake incident and that he did not do so because of the strain in their personal relationship. The weight of the evidence also supports a finding that Hansen did not return Ebel's radio calls following the intersection encounter. Ebel testified credibly that he called Hansen twice on channel six of the car radio shortly after they made eye contact and headed in opposite directions. The evidence establishes that Hansen was responsible for monitoring channel six and that he would have heard any radio calls on that channel unless preempted by a contemporaneous dispatch on the priority State Patrol channel (channel one). Information provided by the State Patrol dispatch office indicates that no call went out on channel one at any time between 1:42 p.m. and 3:11 p.m. on May 17, 2006. In short, the evidence shows that Hansen not only failed to initiate communications with Ebel on that date, but that he also affirmatively avoided responding to Ebel's attempts at communication.

B. The Appropriate Remedy

Hansen argues in the alternative that termination is too severe of a sanction in light of the mitigating circumstances of his daughter's health problems. I am not unsympathetic to this argument. It is clear that Hansen was very concerned for his daughter's well-being and that he was trying to help her through a difficult situation.

Lieutenant Hansen, however, also was a sworn peace officer with primary public safety responsibilities. In his oath of office, Hansen swore "to help those in danger or distress and . . . [not to] swerve from the path of duty." When he turned east at 2:20 p.m. while still on duty at an intersection less than two miles to the west of Mirror Lake, Hansen violated that oath. Moreover, as Captain Soring testified in a thoughtful recapitulation of all of the circumstances, Hansen could have assisted in the rescue and still had more than one and one-half hours to make the approximate twenty-mile trip to Duluth.

This, admittedly, is a close case. Lieutenant Hansen has a good long-term work record and undoubtedly was influenced by legitimate family concerns on May 17, 2006. Nonetheless, it is unescapable that he failed to fulfill his core public safety responsibilities on that day. As Colonel Hamm testified, the Department demands the utmost personal dedication to its public safety mission. Because Lieutenant Hansen actions fell short of that mark, the termination of his appointment is supported by just cause.

AWARD

The grievance is denied.

Dated: March 2, 2007

Stephen F. Befort
Arbitrator