

**THE MATTER OF ARBITRATION BETWEEN**

---

<b>LAW ENFORCEMENT LABOR SERVICES,</b>	)	
	)	
<b>Union,</b>	)	
	)	<b>ROWE SUSPENSION GRIEVANCES</b>
<b>and</b>	)	
	)	
<b>CITY OF BLAINE,</b>	)	
	)	
<b>Employer.</b>	)	<b>BMS Case No. 15-PA-0922</b>
	)	<b>16-PA-0161</b>
	)	
	)	

---

Arbitrator: Stephen F. Befort

Hearing Dates: July 21, 2016  
August 26, 2016

Post-hearing briefs received: October 5, 2016

Date of Decision: October 21, 2016

**APPEARANCES**

For the Union: Scott Higbee

For the County: Susan Hansen

**INTRODUCTION**

Law Enforcement Labor Services (Union), as exclusive representative, brings these two consolidated grievances claiming that the City of Blaine (City or Employer) violated the parties' collective bargaining agreement by imposing two suspensions on Police Officer Greg Rowe – one for 12 hours and one for 40 hours – without just cause. The City asserts that the suspensions were warranted because the grievant failed to back up fellow officers, exhibited an inattention to duty,

and was dishonest. 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.

### **ISSUES**

- 1) Was the 12-hour suspension of the grievant for just cause? If not, what is the appropriate remedy?
- 2) Was the 40-hour suspension of the grievant for just cause? If not, what is the appropriate remedy?

### **RELEVANT CONTRACT LANGUAGE**

#### **ARTICLE 10 - DISCIPLINE**

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

- a) Oral reprimand
- b) Written reprimand
- c) Suspension
- d) Demotion
- e) Discharge

### **FACTUAL BACKGROUND**

The grievant, Greg Rowe, has been employed as a police officer by the City of Blaine since 2003. From 2008 to 2014, he served as the City's first K9 officer and, by all accounts, he performed well in that capacity. Since 2014, he has served as a patrol officer. Prior to the incidents in question, his disciplinary record consisted of three verbal reprimands for inattention to duty and for failure to write incident reports in an acceptable manner.

This case involves two consolidated grievances. The first grievance challenges discipline in the form of a 40-hour suspension that was imposed for conduct occurring in April 2015. The second grievance challenges a 12-hour suspension that involved earlier conduct but an investigation that was not completed until a later point in time. The City maintains that because of this anomalous timeframe, it did not take the 40-hour suspension into account in determining the sanction for the latter determined discipline. Because the second grievance concerns facts that took place earlier in time, the facts pertinent to that grievance will be first described.

### **The 12-Hour Suspension Grievance**

The shorter of the two suspensions was imposed for three alleged policy violations. The first purported violation for inattention to duty occurred on March 14, 2015. At 1701 (5:01 p.m.) on that day, Rowe was writing some incident reports when he was dispatched to a suspicious activity vehicle call at Jefferson Elementary School. Fellow officer Angela Hawley was dispatched on the same call as a back-up. Rowe considered the call to be a low priority since it was his understanding that the suspicious vehicle had already left the area, and he continued to work on his reports for fifteen more minutes. At 1716, Officer Rowe departed in his squad car for the call, but he drove to Johnsville Elementary School by mistake. Rowe never arrived at Jefferson, deciding instead to respond to a different call. Rowe did not communicate with Officer Hawley about his absence, but he did report on the radio that he was responding to the other call. Fortunately, another officer assisted Hawley in subduing a belligerent suspect at the Jefferson school.

A few days later, Officer Caruso reported to Sergeant Warner, Rowe's immediate supervisor, that a number of officers shared the general concern that Rowe had a pattern of failing to respond to calls in a timely manner. Warner investigated further and learned of another incident that had occurred on September 14, 2014.

This second incident involved a domestic dispute. As per the department's practice with respect to domestic calls, two officers - Rowe and Hawley - were dispatched to the location about 35 minutes before the end of their shift. Rowe cleared the call by phone and sent a message to Hawley indicating that he was handing over the call to the officers on the next shift. Following another phone call from the same location asking for police assistance, Hawley handled the call on her own without back-up. She found four drunk and disorderly individuals. Although Hawley told investigators that she was upset with Rowe's failure to back her up in dangerous circumstances, she did not file a contemporaneous complaint against Rowe.

During his internal affairs investigation into these incidents, Sgt. Warner determined that Rowe had failed to submit incident call reports on twelve occasions during the January through March, 2015 period. The department had previously counselled Rowe about the need to prepare such reports and had verbally reprimanded him on two occasions for his failure to do so. Officer Rowe testified that he was not the principal officer responsible for some of the missing reports. He also testified that the City had adopted a new dispatching system in late 2014 that initially caused problems for officers in calling up information for reports and that other officers also had failed to submit required reports.

Sgt. Warner's investigation concluded with a recommendation sustaining each of the three alleged policy violations. Chief of Police Chris Olson issued a one-day (12 hour) suspension for these violations on July 13, 2015.

### **The 40-Hour Grievance**

On April 20, 2015, Officer Rowe was dispatched to a personal injury motor vehicle accident. Rowe was at his home in Blaine at the time using the restroom. While Rowe was donning and doffing his equipment, a police officer from another jurisdiction offered to handle the

call. A few minutes later, when Rowe returned to his squad car, he received a radio message from Sergeant Boerboom asking for Rowe's location so that he could determine who to dispatch to a medical call. Rowe responded that he was at the intersection of Lexington and Main streets, which is approximately 1.5 miles from Rowe's home. By looking at the department's CAD computer system, however, Boerboom could tell that Rowe was not physically situated at that location.

Sgt. Boerboom then asked Rowe to meet with him back at the department's offices. He also asked Sgt. Carlson to sit in on this meeting. When Rowe arrived, Boerboom asked him where he had been when he had said that he was at Lexington and Main. Rowe responded that he had been at his house in the Lakes area of Blaine. Boerboom asked Rowe why he had lied about his location. Rowe responded that he did not want to give out his home address over the radio for safety reasons, and that he did not want to fuel rumors that he was hanging out at his home. During this meeting, Rowe also stated that he specified Lexington and Main because it was the nearest major intersection to his home and he did not think that Boerboom knew where he lived.

Chief Olson assigned Sgt. Boerboom to undertake an investigation into this incident. Based upon Boerboom's findings, Chief Olson decided that Rowe had violated department policies by not promptly responding to a call for service and by being untruthful when asked about his location. Chief Olson imposed a penalty of a 40-hour suspension without pay.

The Union filed grievances challenging both suspensions. The grievances were consolidated for the purposes of this arbitration proceeding.

## **POSITIONS OF THE PARTIES**

### **Employer:**

The City contends that it had just cause to impose suspensions of 12 hours and 40 hours, respectively, based upon the circumstances of this case. The City claims that Rowe was aware of

City policies requiring attention to duty and honesty. The City asserts that Rowe violated the former policy by twice failing to back up a fellow officer and by failing to complete required incident reports. The City maintains that Rowe violated the City's policy on integrity and honesty by providing a false answer to Sgt. Boerboom's question concerning his location. The City finally argues that the suspensions imposed by the City are appropriate given the serious nature of the policy violations.

**Union:**

The Union maintains that the City did not have just cause to support the two suspensions imposed on the grievant. With respect to the 12-hour suspension, the Union contends that the two alleged failures to provide back-up assistance do not warrant discipline because Rowe's failure to arrive at Jefferson school was an inadvertent mistake and because he had properly informed Hawley that the incoming shift would handle the domestic call. In terms of the 40-hour suspension, the Union claims that Rowe's statement that he was at Lexington and Main rather than at his home was excusable because officers have a valid safety reason not to disclose their home address over the radio and because Lexington and Main is the closest major intersection to Rowe's residence. The Union additionally argues that the two suspensions are more severe than is appropriate given the circumstances.

**DISCUSSION AND OPINION**

In accordance with the terms of the parties' collective bargaining agreement, the Employer bears the burden of establishing that it had just cause to support its disciplinary decision. This inquiry typically involves two distinct steps. The first step concerns whether the Employer has submitted sufficient proof that the employee actually engaged in the alleged misconduct or other behavior warranting discipline. If that proof is established, 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* 15-23 (7th ed. 2012).

**A. The Alleged Misconduct**

The City alleges that Officer Rowe engaged in misconduct by violating department policy 102.10, requiring attention to duty, and department policy 102.6, requiring officers to act with integrity and honesty. The City asserts that, with respect to the 12-hour suspension, Rowe exhibited inattention to duty by failing to back up a fellow officer on two occasions and by failing to submit twelve required incident reports during a three-month period. With respect to the 40-hour suspension, the City alleges that Rowe did not respond truthfully when asked by a supervisor about his location.

The Union does not dispute the underlying facts on which these allegations are based. The Union acknowledges that Rowe did not back-up Hawley on the two occasions in question, and, although disputing the number of missing reports for which was responsible, the Union also acknowledges that Rowe failed to prepare some required incident reports. The Union similarly does not contest the fact that Rowe told Sgt. Boerboom that he was at the intersection of Lexington and Main while he actually was at his home 1.5 miles from that location. What the Union does dispute, on the other hand, is whether the remedies imposed by the City were warranted given the facts and circumstances of this case.

**B. The Appropriate Remedy**

The principal issue in this case is whether the penalties of a 12-hour suspension and a 40-hour suspension are appropriate under the circumstances of this case. In discussing that question, it is helpful to consider the two suspensions one at a time.

## **The 12-Hour Suspension**

The City contends that the three inattention to duty violations support the penalty of a 12-hour suspension. The City also claims that this sanction is consistent with notions of progressive discipline since the grievant previously had received three verbal reprimands for inattention to duty issues.

The Union urges three arguments in favor of a lesser sanction. The Union first argues that Rowe's failure to provide back up to Hawley at Jefferson school should be excused because it was inadvertent rather than intentional. While the Union is correct that Sgt. Warner's investigation concluded that Rowe's misdirection to Johnsville school likely was an innocent mistake, it nonetheless demonstrates an inattention to duty. Both the CAD computer and a message from Sgt. Warner identified the correct call location as Jefferson school. In addition, Rowe failed to contact Hawley to inform her that he was delayed and, subsequently, not coming.

The Union also contends that Rowe's failure to provide back up to Hawley for the September 2014 domestic call should be excused because he informed Hawley that he was handing off this call to the next shift. According to the Union, the fact that Hawley nonetheless chose to handle the call on her own is attributable to Hawley's judgment rather than to Rowe's inattention to duty. But, the fact remains that the call came with 35 minutes remaining in the shift and was followed by a series of phone calls asking for help. Rowe's decision not to cooperate with Haley in handling the call demonstrated poor judgment and exposed Hawley to potential harm.

Finally, the Union argues that the City's claim of missing incident reports is inflated since in some instances Rowe was not the officer responsible for the report or the call had been waived off prior to arrival. But, it is undisputed that Rowe failed to complete a substantial number of reports within a short span of time.

In short, the record clearly establishes a series of inattention to duty events. Given the prior verbal reprimands for similar conduct, a suspension of 12 hours is reasonable.

### **The 40-Hour Suspension**

The City contends that Rowe violated the department's policy on integrity and honesty by untruthfully telling Sgt. Boerboom that he was at the intersection of Lexington and Main streets when, in actuality, he was at his home 1.5 miles away. The City further argues that the fact that Rowe provided a multiplicity of explanations for why he gave this inaccurate information constitutes circumstantial evidence of deliberate untruthful conduct.

The Union maintains that Rowe fudged on describing his location because he did not want to disclose his home address over the radio for safety reasons. The Union also contends that Lexington and Main is the nearest principal intersection to Rowe's home and that describing that as his location did not have any detrimental effect on law enforcement efforts.

As an initial point of analysis, it is clear that Lexington and Main and the grievant's home address are not one and the same. Rowe's home is 1.5 miles from that intersection and his description of his location did not provide his supervisor with an accurate description of his location. Moreover, honesty is a very necessary virtue in the role that police officers play in our society.

The City acknowledges that Rowe had valid safety concerns in not publicly disclosing his home location. But, Rowe could have described a more accurate alternative such as the "Lakes" region of Blaine in which his home is situated. Similarly, he could have identified an intersection that was closer to his actual location.

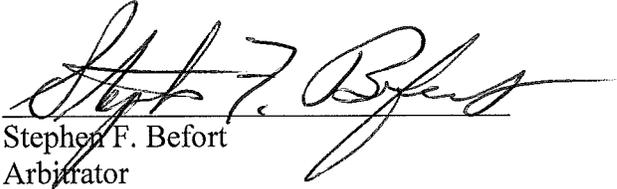
While these facts establish the existence of a violation of City policy, the fact remains that Rowe did not misstate his location as a smokescreen for a plot designed for personal gain. In two

other arbitration awards, arbitrators upheld four-day suspension for unit employees who lied for personal gain. One officer was untruthful for the purpose of being in a position of purchasing an allegedly stolen trailer, while the other officer was untruthful for the purpose of obtaining a desired overtime pay assignment. In this instance, however, Rowe obtained no financial profit by his sandpapering of the truth. Under these circumstances, his suspension should not exceed that imposed on the other two officers.

**AWARD**

The two consolidated grievances are sustained in part and denied in part. The grievance challenging the City's imposition of a 12-hour suspension without pay is denied. The grievance challenging the City's imposition of a 40-hour suspension is granted in part and that penalty is reduced to a suspension of 24 hours. The City also is directed to amend the grievant's personnel file to reflect this determination.

Dated: October 21, 2016.

  
Stephen F. Befort  
Arbitrator