IN THE MATTER OF THE ARBITRATION
BETWEEN:

Mower County,		
	Employer,	**OPINION AND AWARD**
And		
LELS,		**BMS Case No. 24POA1094**
	Union.	

Jeffrey A. Hassan, Arbitrator

APPEARANCES:

For Mower County (Employer)
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For LELS (Union)
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Date of Award: August 9, 2024

JURISDICTION

This arbitration arises pursuant to a collective bargaining agreement between the Mower County Board of Commissioners ("Employer" or "County"), and the Law Enforcement Labor Services ("LELS" or "Union" (Jt. Ex. 1016), representing Sawyer Weiss, ("Grievant" or "Weiss"), who was employed by the Employer, and was a member of the Union.

A hearing was held from June 25, 2024, through June 28, 2024, in Austin, Minnesota, at the Mower County Government Center. Both parties acknowledge that this matter is proper before the arbitrator. Both parties presented witnesses, cross-examined opposing witnesses, and submitted exhibits. Final briefs were filed on August 1, 2024, and the record was then closed.

ISSUE

Did the Employer have just cause to terminate Grievant and, if not, what is the proper remedy?

FACTUAL BACKGROUND

Hire and Promotion

Grievant Sawyer Weiss was hired by the Mower County Sheriff's Department in March 2019, as a Patrol Deputy. On April 19, 2022, Weiss was promoted to the position of Patrol Sergeant. (Jt. Ex.#1011). He testified that to prepare for becoming a sergeant, his field training officer ("FTO") Sergeant (Sgt.) Jeff Ellis, suggested that he assume additional duties as a FTO, become part of the Sheriff's Emergency Response Team (SERT), and take advanced leadership courses online. His promotion took place in April 2022 when Sgt. Jeff Ellis retired. As patrol sergeant, Weiss was assigned primarily to the night shift, continuing his duties as a FTO.

Prior to the incident that forms the basis of this arbitration, Weiss received no formal discipline as a patrol deputy or patrol sergeant; and, in his 4 ½ + years with the Mower County Sheriff's Department he did not receive any performance evaluations.

The November 4, 2023 Vehicle Pursuit

On November 4, 2023, at approximately 3:30 a.m., Weiss became involved in a high-

speed pursuit of a vehicle driven by a 15-year-old Juvenile ("Juvenile"). A Juvenile passenger, age 14, was in the vehicle driven by Juvenile. Weiss testified that he engaged in several high-speed pursuits before this incident, that he had monitored such pursuits, and there have been other fleeing incidents in which he has called off the pursuit.

According to his Incident Report prepared by Weiss dated November 7, 2023, (Jt. Exhibit 1001) Sergeant ("Sgt.") Michael Tischer of the Austin City Police Department was on a routine patrol near 11th Drive N.E. and the I-90 bridge in Austin, when he observed the Juvenile vehicle traveling east bound up the off ramp of I-90 at a high rate of speed. The vehicle failed to stop at the stop sign at the top of the ramp and continued turning left and traveling north on 11th Drive, passing Sgt. Tischer's fully marked squad car.

Sgt. Tischer executed a 3-point turnaround and immediately activated the emergency warning lights on his vehicle in pursuit of the vehicle driven by Juvenile. The Juvenile vehicle sped up, fleeing from Sgt. Tischer. Sgt. Tischer attempted to pursue the Juvenile vehicle, but discontinued his pursuit when he lost sight of the Juvenile vehicle. Sgt. Tischer continued driving along the route traveled by the Juvenile vehicle, when he observed a vehicle's headlights in the north end of Todd Park. Sgt. Tischer entered Todd Park and approached the vehicle whose headlights he had observed and confirmed that it was the vehicle driven by the Juvenile. The Juvenile vehicle, then facing Sgt. Tischer's squad car, drove past him and fled once again.

Sgt. Tischer turned his vehicle around, activated his squad car's emergency warning lights, and pursed the Juvenile vehicle. Once again, Sgt. Tischer lost sight of the Juvenile vehicle, turned off his emergency warning lights, pulled off to the side of the road, and disengaged in the pursuit of the Juvenile vehicle.

Weiss said that he was working the 5 pm to 5 am shift, when at about 3:25 a.m. he was

just east of Austin on I-90 in a median turnaround. He was monitoring his squad car radio when he heard Sgt. Tischer say that a vehicle was fleeing from him, and asking if anyone was close. Weiss interpreted Sgt. Tischer's question as requesting assistance from any law enforcement vehicles nearby. Weiss said he started driving back towards Sgt. Tischer, exiting at the 11th drive exit, then turning northbound on 14th Street. He testified that all he knew was that the fleeing vehicle was a small gold color car, which had gone through a stop sign, turned off its lights, and disappeared.

Weiss approached and passed Sgt. Tischer's vehicle at a high rate of speed as Tischer was stopped by the side of the road after his last attempt to pursue the Juvenile vehicle. (County Ex. #10 - dash cam video) Weiss testified that as he entered County Rd. 16 headed eastbound, he saw taillights ahead of him and when he turned on his squad car radar it was driving at a high rate of speed more than 100 mph. At this point, Weiss did not have his emergency warning lights, or siren activated. He testified that his lights were not on initially because there were rolling hills on County Rd. 16. At the point that Weiss first observed the Juvenile vehicle, County Rd. 16 travels in an easterly direction. According to the testimony of Jamie Meyer, a witness called by Weiss during his case in chief, this stretch of County Rd. 16 is relatively flat. It then turns left headed northbound. (Jt. Ex.#1002) After it turns northbound it becomes more rolling hills.

Grievant continued pursuing the Juvenile vehicle at speeds of more than 120 mph before activating his squad car emergency warning lights. (County Ex.#10) The Juvenile vehicle continued to flee until it crashed at the intersection at the intersection of County Rd. 2 and 570th Avenue. (Jt. Exhibit 1002). The Juvenile and his juvenile passenger were thrown from the vehicle sustaining serious injuries. Juvenile was taken by helicopter to St. Mary's Hospital in Rochester. The Juvenile passenger was taken by ambulance to Mower County

Hospital in Austin.

The total distance traveled by Weiss in pursuit of Juvenile's vehicle varied, depending on what report or testimony is believed, but a minimum of 6 miles. According to Weiss's testimony he did not activate his emergency warning lights until after 4.3 miles into the pursuit. He testified that as a patrol deputy he engaged in pursuits driving more than 100 mph at least once a week. He testified that these high-speed pursuits were initiated primarily without emergency warning lights to "catch up" to the vehicle being pursued before turning on the emergency warning lights. He testified that this was how he was trained by his field training officer Sgt. Jeff Ellis. Weiss stated, everybody has their own way of doing it.

During his internal affairs interview, he reluctantly stated that in retrospect he should have disengaged his pursuit, and that as a supervising officer that is what he would have advised his deputies to do.

Weiss testified that there were several poor word choices and misrepresentations in the incident report he prepared dated November 7, 2023. (County Ex. #3 - Pursuit Report). He said the statement that he took over the pursuit (from Sgt. Tischer) was a poor choice of words, because Sgt. Tischer was no longer pursuing the Juvenile vehicle at the point that he first observed the Juvenile vehicle. He testified that the statement in the incident report that the pursuit covered approximately 7.6 miles over 8 minutes is a misrepresentation of when the pursuit occurred and was a mistake, because he did not begin his pursuit until 4.3 miles after first observing the Juvenile vehicle. The report stating that the pursuit covered 7.6 miles was also directly contrary to his subsequent internal affairs representation that he was "catching up" before the pursuit occurred. He testified that the BCA Pursuit Report that he prepared inaccurately lists Mower County Sheriff's Office as the "Initiating Agency," and Austin Police Department as the "Assisting Agency." (County. Ex. #2) The report also fails to

list probable cause felony fleeing as a reason for the pursuit.

He testified that there were also inaccuracies in the vehicle inventory he prepared, by not including the phone he found at the accident scene in the inventory. He testified that he did not include it because he didn't consider it to be of any evidentiary value and he returned it to the owner. He said in retrospect should have noted it in his report.

Weiss testified that in hindsight he would have chosen not to catch up and pursue the Juvenile vehicle. If he could do over again, he would not go after the taillights at the higher speeds. He testified that he would have discontinued the pursuit if he knew the driver and passenger were juveniles.

Mower County Investigation

Mower County retained Goodhue County Sheriff Captain Collins Voxland ("Cpt. Voxland" or "Voxland") to investigate the November 4, 2023, Weiss pursuit. Cpt. Voxland is the captain of the investigation division of Goodhue County. He was hired by Goodhue County as a patrol deputy in 1994. In 2010 he transferred into the investigation division, and in 2019 he was promoted to captain of the division, at which point he started conducting internal affairs investigation for Goodhue County as well as other law enforcement agencies.

Voxland was contacted by Mower County Sheriff Steve Sandvik's office on November 8, 2023, to investigate the November 4, 2023, pursuit involving grievant Sawyer Weiss. He testified that Sandvik's office sent him the data and information regarding the incident, including police reports, body cam and squad cam video. He reviewed Mower County policies 314 and 316, read the reports, watched the video tapes, and switch board messages. On November 30, 2023, he interviewed Sgt. Weiss.

Voxland testified that he watched the videos to see if the report prepared by Weiss was consistent. He testified that, contrary to Weiss's testimony, no assistance was requested

of Weiss to engage in the pursuit that he's aware of. He stated that it is good practice that if you're going to assist another jurisdiction, that you ask for permission.

Voxland testified that in reviewing Mower County's Vehicle Pursuit policy 314 (County Ex.#16) section 314.3 requires that a vehicle pursuit shall (emphasis added) be conducted with at least one flashing red warning lamp visible from the front and a siren that is sounded when necessary to warn pedestrians or other drivers. Voxland testified that in watching the squad and body cam videos he did not see the elevation changes testified to by Weiss that would have obscured the taillights of the juvenile's vehicle in front of Weiss and that would have obscured his warning lights from the Juvenile vehicle. He said Weiss should have had on his warning lights and siren on. He testified that even if you have on your lights, it does not relieve you of liability if you're driving too fast for the existing conditions. He testified that Weiss's body cam video (County Ex.#10) showed him traveling at speeds of up to 120 mph for a sustained period and as high as 126 mph, while Weiss's squad radar was showing the speed of the juvenile's vehicle at 142 mph.

Voxland testified that he does not believe that Weiss's pursuit was consistent with Mower County policy. He testified that Weiss should have his lights and siren on, he was exceeding the speed limit and putting the public in danger without any warning lights or siren. He said state law requires at least one flashing light. There is no exception. Voxland testified that the risks outweighed the traffic violation. The pursuit took place on a public roadway. People could have been driving. The posted speed limit was 55 mph. He testified that in reviewing the squad and body cam videos the squad car's headlights could always see the road signs. There was no reason not to have the warning lights on. Officers are required to consider risks, and there was no indication of any crime other than traffic violation.

Voxland also testified that initially Weiss said in his incident report that he was

pursuing the juvenile's vehicle, then in the interview he changed his story to say that he was "catching up" as the reason he didn't activate his warning lights.

Voxland testified that his role was to compile information and get it to Sheriff Sandvik for his determination. He did not make a recommendation.

Sgt. Michael Tischer's Testimony

Sgt. Michael Tischer of the Austin city police department has been with the police department since 2006 and has been a sergeant since 2021 or so. He testified that on November 4, 2023, he was the night shift sergeant when he observed the Juvenile vehicle run the stop sign coming off the ramp on I-90. He tried stopping the Juvenile vehicle twice, then turned off his squad warning lights and stopped going after the vehicle. He testified that when he asked if there was anyone close, he was referring to other Austin patrol cars in case the Juvenile vehicle stopped a second time. He testified that he did not request anyone else to take over the pursuit and that he wouldn't ask another agency to take over the pursuit. (Emphasis added) He said he did not pursue the Juvenile vehicle because of Austin's no pursuit policy where there was no violent crime committed at that point.

October 3, 2023 EVOC Training

Captain T.J. Lynch was called to testify about the Emergency Vehicle Operation Course EVOC) training that was conducted on October 3, 2023. Lynch has been with the Mower County Sheriff's Office since 2014. He was a deputy for 4-5 years, then moved to investigations, before being promoted to captain. In that role, he is responsible for training deputies. He testified that there is yearly annual two days of training required training for all deputies. He testified that deputies also receive EVOC training, which consists of a classroom portion and in-person skills portion. He said the Mower County Sheriff's Office uses LEXIPO to give everyone access to departmental policies. When policies are updated, they are sent to

all the deputies.

Lynch testified that the County's vehicle pursuit policy (County Ex.#16) was covered in the EVOC training on October 3, 2023, and was read verbatim intentionally. Weiss was present at this training. (County Ex.#26) Lynch testified that at this EVOC training Sheriff Sandvick was present to speak on the current climate, issues of liability and risks. He urged deputies to use caution, control, and good judgment. He testified that Sheriff Sandvik specifically talked about not jumping into a pursuit without being asked because of the high risk/high liability.

Lynch testified that the second sentence of section 314.7.2, which states that, "Units from this office should not join a pursuit unless specifically requested to do so by the agency whose peace officers are in pursuit." is the portion of the policy that talks about "jumping" into pursuits. (County Ex.#16) He testified that in an earlier email dated July 7, 2022, sent by Chief Deputy Dave Pike, to Weiss and others regarding "Assistance to outside agencies," the email iterated department policy not to interject oneself into outside agency calls without being requested to do so, because it leads to negative consequences. (County Ex.#25) Lynch testified that Sheriff Sandvik reiterated this policy on October 3, 2023.

Lynch testified that Mower County Sheriff's Office policy 314.3 requires red flashing warning lights during a vehicle pursuit, as well as siren. He said there is no discretion regarding the warning lights. (County. Ex. #16) He said that even though the high-speed pursuit took place at 3:30 a.m. in the morning, the Hormel plant has 3 shifts, with workers coming and going around the clock, there are deer everywhere, and hog farms are all over the area with trucks running all hours.

Sheriff Steve Sandvik

Sheriff Steve Sandvik Sandvik) has been with Mower County for 23 years. Before that

he was with Olmstead County for just under 4 years. He was a patrol deputy for 5 ½ years until 2006 when he was promoted to Patrol Sergeant. He was then promoted to Sergeant Investigator. He was elected Sheriff in November 2018 and took office on January 7, 2019.

Sandvik testified that it's the responsibility of the sheriff to make sure policies are accurate for the county. Training is required yearly to update staff on the policies and changes.

He testified that upon becoming sheriff the licensing policies on pursuit training was for training to take place every 5 years. But in his review of pursuit incidents, it became clear that changes needed to be made and direction needed to be given more frequently. He felt that because this was one of the most dangerous activities in which the department engaged, he implemented a minimum of 2 hours of training each year, with driver training every other year, and written training every other year.

He testified that the County's vehicle pursuit policy (County Ex. #16) is reviewed annually with deputies. He pointed to section 314.1.1, entitled Philosophy, states that "An individual's unreasonable desire to apprehend a fleeing suspect at all costs has no place in professional law enforcement pursuit." Citing Minn. Stat. 626.8458 Subd 2 (2) He testified that section 314.1, entitled Purpose and Scope, states that vehicle pursuits expose innocent citizens, law enforcement officers, and fleeting violators to the risk of serious injury or death. He testified section 314.3, states there is no discretion on whether an officer is to turn on their red flashing warning lights during a pursuit, whereas activating a siren is optional. Citing Minn. Stat. 169.17; Minn. Stat. 169.68.

Sandvik testified that even with lights and siren on an emergency vehicle operator is not relieved of duty of due care. He testified that if a vehicle's red flashing lights are not on, then a victim (i.e., the Juvenile vehicle) cannot be guilty of fleeing. (County Ex.#16 – 314.3.1).

He testified that Juvenile's vehicle speeding, turning off headlights, and driving into an unoccupied park do not trigger a pursuit. He testified that driving on a county road is more dangerous, because it only has two lanes, there are intersections and driveways, and they are not engineered for higher speeds.

Sandvik testified that he had just recently emphasized that an agency that initiates a pursuit, in this case the Austin city police department, is responsible for that pursuit. It is the policy of the County not to get involved unless they are asked to join. He testified that the reason for this policy is that they do not have the objective facts to know whether pursuit is necessary. Without this information, it creates danger and liability. Sandvik testified that on October 3, 2023, he emphasized these points along with the department's policy of not jumping (i.e. joining) other agency pursuits, and when to discontinue pursuits. He talked about the bad outcomes the department had experienced from jumping pursuits, and a recent pursuit incident involving a crash.

Sandvik testified that he learned about the November 3, 2023, incident on November 6, 2023, when he was informed by Chief Deputy Pike, and Captain Lynch. He testified that after reviewing Weiss's report, the city of Austin's report, and starting to watch the body cam video, he started to lock everything down. He determined that it mandated a POST (Minnesota Peace Officers Standards and Training) board violation notification of EVOC pursuit policy. He was concerned that it was a direct violation of the training just a month earlier at which he addressed jumping pursuits, and violation of pursuit policy, where there was no request to take over the pursuit or to assist.

Sandvik testified that Weiss's report does not say when his emergency lights were activated, but he didn't see lights or siren turned on in the squad cam video until 6 ½ miles into the pursuit and after traveling over 120 mph. He said there was no reason for Weiss not

to have his red flashing warning lights on and to signal the other driver. He testified that consequently there is no indication to the offending vehicle that it is aware of a need to stop when no lights or siren on. He concluded that he needed to get an outside agency to assist in the investigation.

Sandvik testified that when he read the investigation report prepared by Captain Voxland he went back and began thoroughly reviewing the body cam and squad video. He found that what Weiss reported during his interview with Voxland was very inconsistent with what was in his written report. He determined that Weiss was, at the very least, being misleading.

Sandvik testified that a deer was hit by deputy Kaleb Fish in his response to the scene, indicating that traveling at high speeds was dangerous. Sandvik said Weiss could have also contacted other jurisdictions for the pursuit. That is standard practice.

In response to Weiss's assertion that he was "catching up," Sandvik testified that it doesn't apply in this instance, because it was objectively unreasonable in this case traveling at these high rates of speed.

Sandvik testified that he issued a Loudermill Notice after listening to the Weiss internal affairs interview, which directly contradicted what he read in Weiss's report. He determined that Weiss was making excuses for violating policy and to minimize or mitigate his reasons for driving so fast.

Sandvik testified that the seriousness and gravity of the situation required to have termination on the table. He also determined that he had to report to the POST board and county attorney for potential criminal violation by Sgt. Weiss.

Sandvik testified that at the Loudermill hearing, Weiss said the same things he stated in the internal affairs interview. He did not show any concern for the children who were

injured – only for himself being off work. Toward the end he did say he would have done things differently knowing what he knows now.

Sandvik said he considered other disciplinary options. But as he continued to go back to review what took place, he said we do not have the option of making excuses. At every turn in the process Weiss made conflicting statements or misrepresented what had occurred. There was no acceptance of responsibility. Sandvik stated that as sheriff he has the responsibility to protect citizens from great harm. Driving more than 120 mph, with no lights and no siren at 3:00 a.m., resulted in serious injuries. As he continued to review, he came back to the October 3, 2023, training regarding jumping other agency pursuits.

APPLICABLE CONTRACT, POLICY, AND STATUTORY PROVISIONS

Collective Bargaining Agreement

The Employer and the Union (hereinafter "Parties") are signatories to a collective bargaining Labor Agreement (hereinafter "CBA") covering the period July 1, 2023, to June 30, 2026. (Jt. Ex. #1016). The CBA covered Union members employed as deputies in the Mower County Sheriff's Department. Prior to the levy of discipline by the Employer, the Grievant was a Patrol Sergeant and member of the Union, LELS Local #83, and therefore covered by the CBA. The CBA provides for a three-step grievance process (Jt. Ex. #1016, Art. 3.4). Step 3 is binding arbitration (*Id.*).

By *Loudermill* Hearing Notice dated January 9, 2024, the County notified Weiss that it was considering terminating his employment based on misconduct (Jt. Ex. #1008). By letter dated January 19, 2024, the Employer notified the Grievant that his employment was terminated, effective January 24, 2024 (Jt. Ex.#1009). On January 22, 2024, the Union submitted a Step 3 letter to Employer challenging the dismissal for lack of just cause and seeking rescission of Weiss's termination and immediate reinstatement, restoration of back

pay and lost benefits, and removal of the termination reference from his personnel file. On February 12, 2024, the Union notified the Bureau of Mediation Services that it was submitting the grievance to binding arbitration.

The undersigned Arbitrator was duly appointed and has jurisdiction over this binding arbitration proceeding.

Personnel Policies

Mower County Personnel Policies updated 12/14/2023.

Relevant Departmental Policies

Mower County Sheriff's Office Vehicle Pursuit Policy 314 (County Ex. #16); Mower County Sheriff's Office Policy 316 (County Ex. #18); Mower County Sheriff's Office Report Preparation Policy 344 (County Ex. #19); Mower County Sheriff's Office Vehicle Towing Policy 510 (County Ex.#20); Mower County Sheriff's Office Standards of Conduct 340 (County Ex.#21); Mower County Sheriff's Office Code of Ethics (County Ex.#22); Mower County Sheriff's Office Traffic Collision Policy 502 (County Ex.#23); and, Mower County Sheriff's Office Shift Sergeant Policy 444 (County Ex.#24).

Relevant Minnesota Statutes

Minnesota Statutes 626.8458; Minnesota Statutes 626.8; Minnesota Statutes 169.17; Minnesota Statutes 169.68.

ISSUE

Whether the discharge of Sawyer Weiss effective January 24, 2024, was for just cause and, if not, what is the appropriate remedy?

OPINION

BURDEN OF PROOF

The Employer bears the burden of establishing that there was just cause to terminate the Grievant. To demonstrate that the disciplinary decision is supported by just cause, the Employer must first prove that the Grievant engaged in the misconduct that formed the basis for the discipline. If that is established, the Employer must then show that the level of discipline imposed—in this case termination—is fair and reasonable considering all the relevant circumstances. Each of these aspects of just cause is discussed below.

JUST CAUSE

The "just cause" provision means that an employer cannot discharge, demote, or suspend a peace officer without just cause. The "just cause" standard incorporates a multitude of legal principles developed over many decades in labor grievance arbitrations.[1] In essence, the standard embodies the concept of fairness under all the circumstances, and requires a consideration of several factors, including whether the peace officer violated an employment rule imposed by the employer under the Collective Bargaining Agreement ("CBA"); and if so, the seriousness of the rule violation, the proportionality of the discipline imposed, the peace officer's service record, and the employer's treatment of other officers in like circumstances. Employers and peace officer unions understand these legal principles and incorporate them into their CBAs by simply including the term, "just cause," or a similar term. Peace officer unions rightfully expect that employers will apply these principles when imposing discipline, and unions and employers rightfully expect that arbitrators will apply these principles in the

[1] 4 *See generally,* ELKOURI & ELKOURI, *How Arbitration Works*, Ch. 15 (Bloomberg BNA 8th Ed.).

adjudication of binding arbitration cases. *Id.*

If the union believes that the employer has imposed discipline without just cause, the union may file a grievance with the employer. Minnesota law requires that all public employee CBAs, including those covering peace officers, contain a provision that written disciplinary actions that are not resolved by the parties through the CBA grievance process must be submitted to binding arbitration.[2] In peace officer cases, the Minnesota Bureau of Mediation Services assigns an arbitrator to conduct the arbitration hearing.[3] At the hearing, the employer must prove, by a preponderance of the evidence, that under the terms of the CBA it had just cause in the first instance to discipline the union member and also just cause to impose the level of discipline chosen. Based upon the evidence at the hearing, the arbitrator issues a decision, which is called an award. In preparing the award, the arbitrator must apply the terms of the CBA, including the "just cause" provision and all the legal principles incorporated into that provision. The arbitrator must be fair, impartial, and not biased in favor of or against either party. The award must be based solely on the evidence introduced at the arbitration hearing and the arbitrator cannot be influenced by public sentiment or opinion.

APPLYING JUST CAUSE TO FACTS

Applying the factors of just cause set forth above, the undersigned arbitrator finds that the County carried its burden of proof and established just cause to impose discipline in this

[2] Minn. Stat. § 179A.20, subd. 4(a) (2020).

[3] During its 2020 2nd Special Session, the Legislature enacted Minn. Stat. § 626.892 [Peace Officer Grievance Arbitration Selection Procedure] to govern peace officer labor grievance arbitrations. Under this new law, the Bureau maintains a roster of trained arbitrators to be assigned to peace officer labor grievance arbitrations. These arbitrators are independent contractors and not employees of the Bureau. The parties do not participate in the appointment by the Bureau of an arbitrator and cannot object to the arbitrator appointed.

case. Weiss violated several sections of the Mower County Sheriff's Office Vehicle Pursuit Policy 314. Weiss violated section 314.3 which states that, "It is the policy of this office that a vehicle pursuit shall be conducted with at least one flashing red warning lamp visible from the front …", citing Minn. Stat. 169.17 and Minn. Stat. 169.68. While Weiss asserts that he was "catching up" before activating his warning lights, no mention of "catching up" is made in his original report and there is no mention of "catching up" in sheriff office policies. It appears that the idea of "catching up" was subsequently developed as a justification for Weiss not activating his warning lights as required by the written policy. Even if one assumes that Weiss was "catching up" prior to activating his warning lights, the arbitrator finds that he was also violating the second paragraph of section 314.3, which states, "Operating an emergency vehicle in a pursuit with emergency lights and sirens does not relieve the operator of an authorized vehicle of the duty to drive with due regard for the safety of all persons, and does not protect the driver from the consequences of a reckless disregard for the safety of others." Citing Minn. Stat 169.17. Weiss's chasing a vehicle at speeds of more than 120 mph at 3:30 a.m. on two lane roads with deer along the roadway and traveling for extended lengths of time and distance constitutes a reckless disregard for the safety of others, regardless of when warning lights are activated.

The arbitrator concurs with Captain Voxland who testified that Weiss's conduct also violates policy 314.3.1 (a)–(m), which discourages pursuits of lower-level traffic offenses (i.e. running a stop sign). Further, the arbitrator finds that section 314.3.2 entitled "When to Terminate a Pursuit," was violated when "the totality of objective circumstances … indicates that the present risks of continuing the pursuit reasonably appear to outweigh the risks resulting from the suspect's escape."

The arbitrator finds that Weiss's conduct also specifically violated policy section

314.7.2, which states, "The agency that initiates a pursuit (i.e. Sgt. Tischer of the Austin police department) shall be responsible for conducting the pursuit. Units from this office should not join a pursuit unless specifically requested to do so by the agency whose peace officers are in pursuit. (emphasis added) Notwithstanding, Weiss's interpretation of Sgt. Tischer's question regarding the presence of other Austin police department vehicles, Sgt. Tischer testified that he did not request, and would not request from other agencies, assistance to pursue the Juvenile vehicle. Moreover, Weiss's conduct was a direct violation of Deputy Chief Pike's email of July 7, 2022, and Sheriff Sandvik's directive one month and a day earlier at the EVOC training of October 3, 2023, advising Weiss and other deputies not to "jump" other agencies pursuits because of the extreme danger and liability such conduct entails – the exact type of danger that occurred here.

If we assume as Weiss contends that he was responding to a request for assistance, Weiss also violated Mower County Sheriff's Office policy 316. Section 316.2 states that, "Deputies responding to an emergency call shall sound the siren or display at least one lighted red light to the front of the vehicle…" Like policy 314, policy 316 states that responding with a red light does not relieve the operator of the duty to drive with due care. Further, policy 316.3 states that requests for emergency assistance should be limited to situations in which there is an imminent threat to the safety of deputies or is needed to prevent imminent serious harm to a citizen.

Finally, Weiss himself admits that he violated policy 344 on Report Preparation by including misleading and inaccurate information, including identifying Mower County as the initiating agency and Austin as the assisting agency, by failing to indicate that he traveled 4.3 miles before activating his vehicle warning lights, stating that he was taking over the pursuit when there was no pursuit taking place, and failing to indicate that he was "catching up"

before activating his warning lights.

Applying the additional factors of consideration of just cause, the undersigned arbitrator finds that Weiss's conduct was a serious violation of the rules, which led to dire consequences for two juveniles.

The arbitrator finds, however, that the discipline imposed (i.e., termination), was out of proportion to Weiss's service record, and the employer's treatment of other officers in like circumstances.

THE CONCEPT OF PROGRESSIVE DISCIPLINE

In many instances, discipline should be corrective and not punitive. Corrective discipline encourages the wrong doer to correct behavior through self-discipline. Corrective discipline satisfies the rules of equality of treatment by enforcing equally among all employees the established employer rules, safety practices and responsibilities of the job.[4] The County's personnel policies describe a policy of progressive discipline; however, it reserves the right to deviate from this process and skip any or all degrees of discipline at its discretion. (Mower County Personnel Police B190).

Levels of disciplinary action include:

(1) Oral reprimand

(2) Written reprimand

(3) Unpaid suspension

(4) Demotion

(5) Termination

[4] Susan K. Hansen, presentation to MINNESOTA CHIEFS OF POLICE CLEO AND COMMAND ACADEMY INTERNAL AFFAIRS AND THE EXECUTIVE, February 11, 2020; SHansen@mgh-lawfirm.com

Factors of Consideration

The rule of reason which underlies the standard of just cause or any other comparable standard for discipline, requires the employer to justify the penalty as well as the disciplinary action. *Id.*

Arbitrators may substitute their judgment for that of the employer in assessing the appropriateness of the penalty. In assessing the justness of the penalty, the arbitrator may take into consideration the following:

a. The gravity of the offense or rules violated.

b. The circumstances under which the misconduct occurred.

c. Extenuating facts.

d. The offender's seniority standing.

e. The employee's past record within a reasonable period of time. *Id.*

THE APPROPRIATE LEVEL OF DISCIPLINE

At the conclusion of the hearing in this matter, the undersigned arbitrator announced that he would not sustain the termination of Sawyer Weiss; and in a subsequent clarifying email stated that, "I wish to clarify that I find that there was 'just cause' for discipline of Sergeant Sawyer Weiss; but that termination was not the appropriate level of discipline. Accordingly, I asked the parties to focus their post hearing briefs on the appropriate level of discipline."

The Union argues in its post hearing brief that Weiss should receive a written reprimand, and the County argues that Weiss should be demoted without receiving any backpay. The arbitrator finds that neither of these alternatives are appropriate in this case.

Applying the factors of consideration for discipline set forth above, the undersigned arbitrator finds that the gravity of the offense resulting in potentially life-threatening injuries

to two minors, ages 14 and 15 years, is a major factor of consideration in this decision. Weiss clearly violated Mower County Sheriff Office policies 314 and 316 as enumerated earlier. Moreover, Sheriff Sandvik specifically addressed policy 314 Vehicle Pursuit just one month and a day prior to the incident in question, and the policy of "jumping" pursuits was addressed in an email dated July 8, 2022, by Chief Deputy Pike.

The circumstances under which the misconduct occurred also support the imposition of significant discipline against Sawyer Weiss. Specifically, the only initiating offense known to Weiss to have been committed by the 15-year-old Juvenile was "running a stop sign." The arbitrator cannot find any justification for engaging in a high-speed chase at 3:30 in the morning on country roads at speeds more than 120 mph without warning lights or sirens for an extended length of time and miles for a vehicle "running a stop sign." The arbitrator does not find any extenuating facts that would justify Weiss's violation of the county's pursuit policy – there was no threat of danger of imminent harm to anyone other than by Weiss's pursuit itself.

While Weiss presented evidence of two other high-speed chases by other sheriff deputies that resulted in serious injuries, and in one instance death, that did not result in significant discipline, the facts and circumstances of those cases are distinguishable. In neither case did the deputies violate department policy. In both cases, the deputies activated their warning lights and sirens during the pursuit as required by department policy. In one instance, the pursuit was terminated before the accident occurred, and in the other instance additional assistance was requested from other agencies. There were no inaccuracies, misleading information, or inconsistencies in their reports.

Weiss made a serious mistake resulting in grave injuries to two juveniles. For that, he must take responsibility with substantial disciplinary action. However, his mistake should not

totally negate his previous record of performance. Weiss's seniority, positive standing among his fellow officers, exemplary conduct and absence of past misconduct militates in his favor. Moreover, the county's failure to ever conduct an evaluation of Weiss's performance, contrary to its own personnel policies, works in Weiss's favor and to his benefit. Sgt. Ellis testified that he identified Weiss's decision making and leadership potential early on and encouraged him to prepare himself for promotion. Weiss's co-workers Jamie Meyers, Nick Kresbach, and Brady Reub all testified favorably for Weiss. They stated that he was very professional, was trusted by his colleagues, had a calm temperament, and showed discretion. Reub testified that he was a "phenomenal guy."

The arbitrator does not find that demotion is the appropriate discipline. Weiss stated during his internal affairs interview that he learned from this experience and that his supervisory responsibilities dictated a different response to the facts of this case. On the other hand, given the severity of the consequences of Weiss's conduct, a written reprimand is not appropriate either.

AWARD

Accordingly, a six-month suspension without pay from January 19, 2024, to July 19, 2024, is justified and appropriate. Therefore, the grievance is granted in part and denied in part.

Dated: August 9, 2024

Jeffrey A. Hassan, Arbitrator