Arbitration between:

City of Bartow, Florida

and

West Central Florida Police Benevolent Association

FMCS Case No. 05-52254

BEFORE: PAUL GREENBERG, Arbitrator

Appearances:

For City of Bartow, Florida:
Mitchell Dean Franks, Esq., *Lakeland, Florida*

For West Central Florida Police Benevolent Association and Grievant:
Robert T. McCabe, Esq., *Office of R. Jeffrey Stull, P.A., Tampa, Florida*

DECISION

The Grievant has been on the Bartow police force more than 14 years. He was promoted from Police Office to Sergeant around 1999. In late 2003 the Grievant was assigned to supervise the Crime Suppression Team, a special small unit of three Bartow police officers (plus the Grievant) created to target property crimes, burglaries and similar crimes, which had spiked in the community. Because of the small size of the unit, the Grievant functioned as a hands-on supervisor, "working the road" with his police officers and handling backup.

The Grievant was on patrol at 3:00 AM on July 31, 2004, when he attempted to make a traffic stop of a vehicle he found suspicious. A series of events followed which ultimately led to his demotion from Sergeant to Police Officer rank.

The Grievant's traffic stop and the competing domestic disturbance call. On the morning of July 31, the Grievant observed a small pickup truck driving through a known drug market area. The Grievant felt the truck really did not seem to be going anywhere, and began to follow it. He noticed the vehicle did not have brake lights, and he decided to stop the vehicle. He contacted dispatch, notifying them of his activity and asking for a check to see whether there were outstanding "wants or warrants" on the vehicle or its registered owner. Two other officers listening to the radio communication advised dispatch they would respond as backup to the

Grievant. Although one of the two backups subsequently was dispatched to a different call, a third officer indicated he was near the Grievant's location and also would provide backup.

Generally, the Grievant had advised the dispatchers that members of the Crime Suppression Team would backup each other; based on this instruction, the dispatchers ordinarily did not expect to assign officers to backup members of the Team unless they perceived a growing problem, with additional backup from non-Team officers needed. Two dispatchers were working in the dispatch room on the morning of July 31: Mary Neurohr and Dawn DeSalvo. The Grievant's primary communication was with Dispatcher Neurohr.

At about the same time the Grievant was attempting his traffic stop, Dispatcher DeSalvo received a phone call from a juvenile reporting a domestic disturbance between her mother and stepfather. Based on the tenor of the juvenile's voice, and the fact that both disputing adults were still present in the house, DeSalvo advised Neurohr the situation might be urgent and escalating. Neurohr proceeded to dispatch officers to the scene of the domestic disturbance.

Dispatcher Neurohr continued to monitor the traffic stop. She quickly provided the Grievant with information on the suspect vehicle, including the name of the registered owner. However, no additional background criminal information was immediately provided on the registered owner while the attempted traffic stop was in progress.

The suspect vehicle refused to stop. Department policy generally prohibits chases except to apprehend persons wanted in violent felony cases. Lacking information about the vehicle owner that might have justified a chase, the Grievant abandoned the traffic stop as the vehicle approached the city limit and asked dispatch to notify the police department in the neighboring community that the vehicle had entered their jurisdiction. In the Grievant's view, if he had been provided timely information that would have supported a pursuit (*e.g.*, that the registered owner of the vehicle was subject to an outstanding warrant), he might have responded differently to the "failure to stop." Several minutes later, the domestic disturbance call also was cleared at 3:42 AM.

At no time did the Grievant use any of the standard radio cues to signal to the dispatchers and other police officers that he believed himself to be in imminent danger or in need of priority attention.

The Grievant's confrontation with Dispatcher Neurohr and subsequent complaint to the dispatch supervisor. The dispatchers have a supervisory "chain of command." However, when their supervisors are not present during "after hours" periods like late at night, the dispatchers are responsible to the patrol division, which would be the corporals or sergeants on duty. Although the Grievant was not the dispatchers' supervisor, he was the senior sergeant on duty the morning

of July 31. In addition, the Grievant occasionally has worked dispatch himself.

Police activity in Bartow is monitored using two tools. One is the Computer Assisted Dispatch (CAD) system, which requires dispatchers to enter information into a computerized log while an event is taking place (*i.e.*, the initial incident report, who is serving as backup, further data documenting the event as it develops, outcome/closing, etc.). This is a manual data-entry system; if the dispatcher does not take time to record developments, the CAD record may be incomplete. In addition to the manual CAD entries, all dispatch room radio traffic is recorded on audiotape. CAD printouts are readily available to police officers, but audiotapes are not generally accessible.

After the failed traffic stop, the Grievant returned to the dispatch room at police headquarters. He confronted Dispatcher Neurohr, criticizing her for failing to dispatch a backup to him. Neurohr assured the Grievant she knew he had backup throughout the traffic stop incident. When the Grievant pressed her for the names of his backup officers, she was unsure specifically who had responded to the Grievant's call, and acknowledged she had not entered the officers' names into the CAD system. Witness accounts differ, but it appears the conversation lasted between 15 and 30 minutes. The Grievant states he did not yell at Neurohr, but Neurohr states the Grievant was upset and raised his voice, reprimanding her and belittling her job performance. DeSalvo was present throughout the exchange and confirms Neurohr's account.

According to the Grievant, he was concerned the dispatchers had not sent backup to a situation in which he (the Grievant) could have been in danger – *i.e.*, the refusal of a suspicious vehicle to stop at the direction of a police officer. Neurohr responded she was certain the Grievant had backup throughout the incident, and also felt the domestic disturbance at 3:00 AM also held the potential to result in serious harm to the involved citizens. During this exchange, the Grievant stated he "didn't give a damn" about the citizens of Bartow, and that his safety as a police officer came first. This statement that he "didn't give a damn" about the citizens was made by the Grievant at least twice, sometimes embellished with profanity.

Even after the confrontation with Neurohr, the Grievant remained focused on the incident. At 5:00 AM, he called the Communications Supervisor, Kim Johnson, at her home, rousing her from her sleep to complain about Neurohr's handling of the dispatch. The Grievant and Johnson have worked together on the force for many years, and have a friendly professional relationship. In a statement she later provided to Internal Affairs, Johnson says the conversation with the Grievant lasted about 30 minutes. After discussing the matter with the Grievant, Johnson committed to investigate the matter further. She spoke with Neurohr, and subsequently had additional follow-up conversations with both the Grievant and Neurohr the next day.

Follow-up to the July 31 incident and dispatch room confrontation. On August 2, the

Grievant approached his supervisor, Captain Robert Green, and shared his concerns about the July 31 traffic stop. According to Capt. Green, the Grievant complained the dispatch office (1) had not assigned him backup on the evening of July 31, (2) failed to respond to his request for background checks on the suspect vehicle and vehicle owner, and (3) failed to stay in contact with him to make sure he was OK. The Grievant provided Capt. Green with copies of the CAD printouts for the traffic stop and domestic disturbance events; the printout related to the traffic stop does not include any entries indicating backup had been provided. In essence, Capt. Green understood the Grievant to be complaining the dispatchers had been inattentive to their work and to his safety. Capt. Green states he was concerned about the situation as described by the Grievant. If the events had occurred as the Grievant described, Capt. Green felt the Grievant's safety concerns were valid. He promised to investigate the matter. According to Capt. Green, the Grievant mentioned he had spoken with Johnson about the situation, but did not disclose to Capt. Green the July 31 confrontation with Neurohr in the dispatch room.

The next day, Capt. Green and Johnson reviewed the audiotape of the on-air voice traffic for the morning of July 31. Although the transcript of the tape confirms that dispatch did not *assign* backup to assist the Grievant with the vehicle stop, it also makes clear the Grievant had at least two officers serving as backup throughout the attempted traffic stop, and who were participating in the radio communication. The tape shows dispatcher Neurohr promptly provided the Grievant with background information of the suspect vehicle, but did not produce criminal background information on the registered owner. In addition, Neurohr was in voice communication with the Grievant throughout the event. In Captain Green's view (as well as the view of Communications Supervisor Johnson), the Grievant never was in imminent danger and Neurohr's performance of her dispatch duties was fully satisfactory: dispatch was monitoring the Grievant's status throughout the event, knew he had backup, and provided timely data support.

Two days later (8/4/04), the Grievant provided a memo again recounting his concern with the way the events of July 31 had been handled by dispatch, but with a change in emphasis. In the Grievant's view, the July 31 incident suggested a need to develop policies to guide the dispatchers. In his memo, the Grievant mentioned his late-night conversation with Neurohr, and expressed his unhappiness with Neurohr's view that the Grievant had not been in immediate danger on July 31 and that the dispatchers had discretion to decide whether to dispatch officers to the domestic disturbance situation even while an officer (*e.g.*, the Grievant) was dealing with a "refusal to stop" traffic situation. The Grievant contended the domestic disturbance was not an emergency call, and questioned Neurohr's judgment in concluding he (the Grievant) was not in danger in the traffic stop. He suggested it was necessary to develop a standardized procedure to resolve this type of conflict so that dispatchers would know the Department's policy and officers would know what to expect.

Capt. Green filed a complaint against the Grievant with Chief Erik Sandvik on August 25,

2004, recommending an Internal Affairs investigation. In his words, "After reviewing all documentation available and interviewing the witnesses I find dispatchers handled the situation in the proper manner. [The Grievant] was unprofessional to say the least, used very poor judgment, was untruthful about how the incident took place and in doing so violated several of the Department's policies."

An Internal Affairs Investigation was conducted, and the Department concluded the Grievant violated each of five elements of the Code of Conduct:

> **SOP-201, II (C):** Members [of the Department] shall conduct themselves with the highest personal integrity. It will be a basic tenet that all citizens are guaranteed equal protection under the law. Members will have an impartial attitude toward all persons who come to the attention of the Department. They will be truthful whether under oath or not. They will, at all times, remain loyal to the City, the Department, and to their fellow officers. They shall conduct their private and professional lives so as not to commit any act tending to bring reproach or discredit upon the Department. Members shall direct and coordinate their efforts in such a manner as will tend to establish and maintain the highest standards of efficiency.
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> **SOP-201, IV (E)(10):** Members will not use discourteous, abusive, profane or insulting language in any circumstances in the performance of their duties or when representing the Department.
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> **SOP-201, IV (S)(9):** No member or employee shall knowingly make any false official report, written or oral, or give false or fictitious information during department investigations or inquiries.
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> **SOP-201, IV (X)(1):** Members shall not lie, give misleading information, have "selective" memory, or falsify written or verbal communications in official reports or in their actions with another person or organization when it is reasonable to expect that such information may be relied upon because of the member's position or affiliation with this organization.
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> **SOP-201, IV (X)(2):** Examples of violations
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> a. Giving untruthful or misleading statements or partial truths during a legal proceeding, public service organization investigation, or administrative proceeding.
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> * * *

f. Falsifying any report or testimony, in part or whole, or failing to provide a complete and accurate report, testimony or account when it is evident to a reasonable and prudent person that a complete report would lead to a different conclusion.

The Department notified the Grievant it was considering demoting him to the rank of Police Officer as a sanction. This would be a "two grade" demotion to the basic Police Officer rank, reducing his status even below the intermediate Corporal level.

A pre-disciplinary hearing was held by Chief Sandvik, during which the Grievant acknowledged he had made serious errors in judgment. The Grievant accepted the proposition that some discipline would be appropriate, but argued demotion was too severe a sanction. Nonetheless, Chief Sandvik concluded the Grievant's conduct was unacceptable and he had lost confidence in the Grievant's ability to serve as a shift supervisor. The Chief ordered the Grievant demoted. The Grievant grieved the Chief's decision, and the matter was appealed to the Bartow City Manager, who sustained the demotion. This arbitration followed.

ISSUE PRESENTED

Did the Department violate the collective bargaining agreement when it demoted the Grievant from Sergeant to Police Officer? If so, what shall be the remedy?

RELEVANT PROVISIONS OF THE LABOR AGREEMENT

Sec. 3.1: Except as expressly limited by any provision of this Agreement, the City reserves and retains exclusively all of its normal and inherent rights with respect to the management of its operations, including, but not limited to, its rights . . . to transfer, promote or demote employees . . . [and] to suspend, discharge or otherwise discipline employees for just cause . . .

Sec. 4.3: . . . The decision of the arbitrator shall be final and binding on both parties. The arbitrator shall have no power to amend, add to or subtract from the terms of this Agreement.

Sec. 9.4: . . . [N]o employee shall be suspended, discharged or disciplined without just cause.

POSITIONS OF THE PARTIES

A. The Department's position.

The Department's decision to demote the Grievant is justified under "just cause." The Grievant has admitted using poor judgment in his dealings with the dispatchers, and using profanity. He has admitted making disparaging comments about the citizens. Any of these incidents standing alone would be sufficient to warrant demotion.

In addition, the Grievant was dishonest or misleading in his report to Capt. Green on August 2. He told Capt. Green the dispatchers had not assigned backup, when the Grievant knew he had backup. Moreover, the Grievant previously had instructed the dispatchers that members of the Crime Suppression Team normally would back up each other, and the dispatchers therefore did not normally need to assign backups from other members of the police force. He told Capt. Green that the dispatchers had not provided criminal background information as requested, when it is clear the dispatchers promptly provided information on the suspect vehicle. The Grievant failed entirely to mention his early morning visit to the dispatch office, or his action berating the dispatchers. He was never in any danger, but asserted to Capt. Green that the dispatcher's actions had raised safety concerns. Taken together, this is conduct by a law enforcement officer that generally is unacceptable to the Department, and particularly unacceptable coming from a Sergeant. The Department therefore had just cause to demote the Grievant to the rank of Police Officer.

B. The Grievant's position

The Grievant acknowledges he used very poor judgment in several respects. He admits he handled the interaction with the dispatchers on July 31 poorly, especially in light of the information included in the transcript of the radio traffic that morning. He is willing to apologize for the way he communicated with the dispatchers. He also admits he erred in saying he did not care about the citizens, and using profanity, but notes he was truthful in admitting this error when interviewed by Internal Affairs. The Grievant states he does not really feel what he said when he dismissed the importance of the citizens' safety, but he was angry at the time, and this was not a statement made to the public. The Grievant also acknowledges that a domestic disturbance, even if only verbal, has the potential to escalate into a dangerous situation.

Although the Grievant now acknowledges receiving background information from the dispatchers on the suspect vehicle, he contends the more important information for his work on the Crime Suppression Team was to obtain a criminal background check on the vehicle's owner. The record shows the information on the registered owner was not provided while the event transpired. In the Grievant's view, his complaint that he did not receive background information

from the dispatchers was not false or misleading.

The Grievant denies his visit to the dispatch office disrupted Department operations. Although he does not defend his use of profanity with the dispatchers, he notes Neurohr never broke off the conversation with him and never filed a complaint.

In his defense, the Grievant denies having lied to Capt. Green during the conversation that occurred August 2. With regard to his safety concerns, the Grievant states he knew backup was on the way, but he did not actually see any backup near him at the time he was trying to stop the suspect vehicle. In his view, a vehicle refusing to stop has the potential to create a safety problem for the officer involved. In addition, the Grievant notes that when he spoke with Capt. Green on August 2, he provided the CAD printouts for both the traffic stop (showing no backup dispatched) and the domestic disturbance event, which included full dispatch records.

The Grievant admits there is just cause to impose some discipline, but argues the facts do not support the severe penalty of demotion to the Police Officer rank.

DISCUSSION

As noted above, the Grievant admits some portions of the charge proffered against him, and acknowledges his actions on July 31 demonstrated poor judgment. The core of his challenge is that the Department's action – demotion to Police Officer – is excessive, and some lesser discipline should be imposed by the Arbitrator. Arguably, the Grievant admits just cause exists for *some* kind of sanction. An initial question that must be considered, then, is whether this Arbitrator has authority even to consider modifying the Department's action as Grievant urges, or whether my function is limited to determining whether just cause for the *demotion* exists.

The Department cites two cases in which courts repudiated arbitration awards because the arbitrator held some discipline was appropriate, but concluded the sanction imposed by the employer was too great and imposed a lesser penalty.

In *Butterkrust Bakeries v. Bakery, Confectionery & Tobacco Workers Int'l Union*, 726 F.2d 698 (11th Cir. 1984), the court of appeals reviewed an arbitration award in a discharge case. The parties had stipulated the question submitted to the arbitrator was whether there was "just cause" for the *discharge*. The arbitrator's decision was ambiguous; although the arbitrator concluded the employee's offense merited discharge, he then found that if the employee completed a Dale Carnegie course, this would mitigate the "just cause" finding. He ordered the employer to reinstate the worker upon completion of such a course. The court repudiated the arbitrator's award. Relying on the framing of the issue as stipulated by the parties, the court

concluded the arbitrator's work ended once he found just cause for discharge, and the arbitrator exceeded the scope of his authority when he concluded a lesser or alternative sanction was more appropriate.

In *County of Centre v. Musser*, 548 A.2d 1194 (Pa. 1988), the Pennsylvania Supreme Court considered an award in which an arbitrator found a county prison had cause for disciplining prison guards, but rejected the employer's decision to discharge the employees and instead imposed a four-week suspension. The labor agreement provided that "should a grievance over discharge or discipline go to arbitration for determination, the sole question to be decided by the arbitrator shall be a question of fact as to whether or not such employee was discharged for just cause." Citing *United Steelworkers of America v. Enterprise Wheel and Car Corp.*, 363 U.S. 593 (1960), the court found the arbitrator's decision did not draw its "essence" from the collective bargaining agreement. Concluding the arbitrator's sole function was to determine whether the public employer had just cause to impose discipline – and not to second-guess the level of discipline imposed – the court rejected the arbitrator's modification of the remedy and reinstated the discharge.

Where a labor agreement clearly limits an arbitrator's authority to modify an employer's action, the Florida courts have not hesitated to reverse an arbitration award upon a finding that an arbitrator has exceeded his authority. *School Bd. of Seminole County v. Cornelison*, 406 So. 2d 484 (Fla. App. 5 Dist. 1981), *review den'd sub nom Cornelison v. School Bd. of Seminole County*, 421 So. 2d 67 (Fl. 1982). However, where labor agreements do not limit the authority of an arbitrator to modify an employer's discipline, or otherwise are ambiguous, the Florida courts generally have upheld the ability of arbitrators to interpret collective bargaining agreements, and specifically have upheld arbitral decisions in which arbitrators modified the employer's penalty. *See Communications Workers of America L. 3172 v. City of Largo*, 463 So. 2d 454 (Fla. App. 2 Dist., 1985); *Amalgamated Transit Union L. 1593 v. Hillsborough Area Regional Transit Auth.,* 450 So. 2d 590 (Fla. App. 2 Dist., 1984).

In this case, the parties did not jointly submit a stipulated statement of the issue presented. The Arbitrator proposed the issue be framed, "Did the Department violate the collective bargaining agreement when it demoted the Grievant from the position of Sergeant to Police Officer? If so, what shall be the remedy?" The parties agreed to this formulation, with the Department noting its view that its action (demotion) was based on just cause following a full investigation. Because the issue before me is not framed as narrowly as the stipulated issue before the arbitrator in the *Butterkrust Bakeries* case, *supra*, the scope of my review has not been expressly limited by the parties themselves. And unlike the situation confronting the court in the *County of Centre* case, the collective bargaining agreement governing this dispute does not include any language limiting the Arbitrator solely to determining whether there was just cause for the *specific* discipline imposed by the employer. Because there is no express limitation on

my authority in this regard, either by agreement of the parties when framing the issue to be decided or through the labor agreement itself, it is my interpretation that the collective bargaining agreement authorizes me to consider a different penalty if I conclude some action is warranted, but that demotion is inappropriate.

In the labor arbitration field, a distinction is made between *disciplinary* demotions and *nondisciplinary* demotions. Disciplinary demotions are imposed upon otherwise-qualified employees as a penalty for specific work infractions. On the other hand, nondisciplinary demotions occur when an employer concludes an employee is no longer competent to perform the job. *See generally* ELKOURI AND ELKOURI, HOW ARBITRATION WORKS, 800-05 (6th Ed., BNA Books 2003). Of course, while labor arbitrators distinguish between disciplinary *vs.* nondisciplinary objectives, employers and unions often do not, so it sometimes is unclear which goal is operative in a particular employer's decision to demote an employee to a lower job classification.

Management use of demotion as a disciplinary tool has proven particularly troublesome for arbitrators. As a group, labor arbitrators (like most employers and unions) are invested in the notion of progressive discipline, which is premised upon the assumption that workers are predisposed to want to perform their jobs better (or at least keep them) and most likely will respond to discipline by altering their behavior and/or improving their work. Discipline, then, normally is to be imposed gradually and proportionate to the offense, all in an effort to correct performance without imposing a disproportionate harm on the employee and the employment relationship.

If the goal of progressive discipline is to heal the employment relationship with minimum trauma to the patient, then demoting an employee as a disciplinary measure is like performing surgery with an axe: the operation may be a success, but the scars are very deep. Demotions may result in permanent cuts in pay and retirement benefits for the affected worker, and in a unionized context may run afoul of seniority principles. From a human resources standpoint, reducing an otherwise-competent employee purely as form of discipline may be counterproductive to the goal of improving the employee's performance, and may have unpredicted effects on the morale of other workers.

Because demotion is disfavored as a disciplinary tool, labor arbitrators frequently have rejected demotion as too severe a penalty and have substituted other forms of discipline. *See, e.g.*, *City of Portland, OR, Police Bureau and Portland Police Commanding Officers Ass'n*, 33 LAIS 64 (Reeves, 2005) (rejecting demotion in favor of suspension); *Int'l Ass'n of Firefighters L. 344 and City of Detroit*, 18 LAIS 2052, 96 LA 995 (Roumell, 1991) (approving suspension portion of proposed discipline, but rejecting 6-month demotion); *City of Key West*, 106 LA 652 (Wolfson 1996) (police captain's demotion for inappropriate statements to female officer

rejected, suspension imposed); *Ohio Dep't of Highway Safety*, 103 LA 501 (Feldman 1994) (demotion too severe; employee reinstated without back pay); *Southern California Rapid Transit Dist.*, 100 LA 701 (Brisco 1992) (demotion because employee used profanity to demean supervisor converted to suspension without pay). There also have been occasions where arbitrators have approved demotion, but to a job category above the level proposed by the employer. *Fraternal Order of Police Lodge 177 and City of Bartlesville*, 29 LAIS 3447, 116 LA 777 (Goodstein 2001). Factors arbitrators have considered when mitigating a demotion have included an employee's long tenure with the employer and in the position; the employee's otherwise-clean employment record; and whether the employer's rules are unclear and/or have not been consistently applied.

On the other hand, if the demotion is nondisciplinary – *i.e.*, the employer has acted because it no longer believes the individual can perform the job competently – then an arbitrator's approach is likely to be different.

According to Chief Sandvik, he decided to demote the Grievant because he had doubts about the Grievant's ability to serve as a supervisor. The Chief notes that a short time before the July 31 car stop incident, the Florida Department of Law Enforcement received an anonymous complaint concerning a possible false arrest involving a member of the Grievant's Crime Suppression Team. An affidavit that was gathered as part of the investigation was misleading or false in key respects, including the failure to identify witnesses to the event. The affidavit was attested to by the Grievant. In the Chief's view, the witnesses were present at the arrest incident and the Grievant knew it, yet the Grievant did not insure the witness names were included in the affidavit – even though it would be difficult to verify what had transpired during the arrest without speaking to the witnesses. Upon review of the FDLE report, Chief Sandvik concluded there was very little basis for making the arrest and the city was fortunate it was not sued. This earlier incident had prompted the Chief to have concerns about the Grievant's candor.

The Grievant's performance at other times also has been criticized. The record includes several counseling forms issued to the Grievant by his superiors dating from 1999 to 2003, covering different types of infractions. Under Department policy, SOP 208, letters are not considered discipline. (Although the labor agreement does not address how these counseling forms may be used in connection with discipline or demotion, it provides that "written reprimands" more than three years old may not be considered in promotion actions.) One of the counseling letters involves an exchange of inappropriate language with dispatcher Neurohr; that event, where the exchange appears to have been somewhat playful and not serious, and was mutual, resulted in both employees being counseled. In another instance, the Grievant was counseled for failing to make a full disclosure to his superior, Capt. Green, when Green was investigating allegations of harassing-type activities among members of the squad. Also included is one written reprimand issued to the Grievant in 2002, the lowest form of "official"

discipline, relating to an incident when a prisoner was left in a cell for an excessive length of time.

The record also includes testimony that the Grievant previously was counseled regarding his interaction with the dispatchers. Specifically, the Grievant once threatened to issue a counseling letter to a dispatcher for work he perceived as subpar. The Grievant was instructed not to counsel the dispatchers himself, but instead to bring any dispatcher performance problems to the attention of their supervisor for action.

Chief Sandvik noted the Grievant admitted he had declared to Neurohr that he "didn't give a damn about the citizens of Bartow," and also admitted he had shown poor judgment on the night of July 31. Based on the exchanges between the Grievant and Captain Green following the July 31 incident, it was Chief Sandvik's view the Grievant was deceptive or misleading to Capt. Green in his account of what had transpired.

In Chief Sandvik's view, the incident involving the Grievant on July 31 was a routine traffic stop, and the Grievant was not in any danger and had backup. In his opinion, the dispatchers were entirely correct to dispatch officers to the domestic disturbance call, and it was not even a close choice. Thus the Grievant's initial assessment of the overall situation demonstrated poor judgment, which the Grievant then compounded by "berating" the dispatchers.

Chief Sandvik testified this was the first time he had demoted a sergeant on the force, but it also was the first time he had concluded an employee of the Grievant's rank had been untruthful when reporting to senior management of the Department.

With due respect to the Chief, I find the record surrounding the Grievant's performance as a sergeant generally, and the events of July 31, 2004, specifically, are not quite so clear-cut as it relates to the central question in this proceeding, *i.e.*, the Grievant's competence to perform the work of a police sergeant. For example, the record includes the Grievant's annual performance reviews throughout his tenure as a sergeant from 1998 to 2004. The last such evaluation was issued by Capt. Green on May 28, 2004. Of the 20 factors on which the Grievant was evaluated, he was found to "exceed" expectations on 13, and "meet" expectations on 7. Capt. Green's narrative is effusive in praising the Grievant's work as head of the Crime Suppression Team, characterizing him as a "very hard working and dedicated supervisor. I am very pleased with [the Grievant's] performance during the evaluation period." On the same May 2004 evaluation, Chief Sandvik says he is "extremely impressed" with the Grievant's performance, and the Crime Suppression Team "has reduced property crime in the city." In turn, the City Manager – also on the same form – declares "Excellent evaluation! . . . Your dedication and hard work is paying off and is appreciated." In what must be a bitter irony for the Grievant, his May 2004 performance

review is the most highly favorable evaluation received during his entire six years as a Sergeant on the Bartow police force.

Further, the Grievant's credible account of the circumstances underlying his attempt to stop the vehicle on July 31 also show the event was not a "routine traffic stop" to ticket a car without brake lights. The Grievant's interest in the vehicle was prompted by his observing the car wandering through a known drug market area at 3:00 AM. It is clear to this Arbitrator the Grievant was not simply engaged in traffic enforcement to stop a car without brake lights, but instead was seeking an opportunity to stop and identify someone he suspected to be involved in more serious unlawful activity. Given the failure of the driver to stop when directed under these circumstances, the Grievant's enhanced concern that the situation could become dangerous for him was rational, and he was justified in wanting information quickly about the vehicle and its registered owner. Stated differently, the Grievant was engaged in precisely the kind of active policing the Department expected from the Crime Suppression Team he headed, and which had prompted such vigorous praise from Capt. Green, Chief Sandvik and the City Manager just two months earlier.

That having been said, I also find the poor judgment shown by the Grievant on July 31 and soon thereafter, combined with prior incidents cited in the record, show the City had just cause to conclude the Grievant should be relieved of supervisory duties and demoted.

First, after the failed traffic stop, the Grievant's first reaction was to return to headquarters and berate Dispatcher Neurohr for allegedly failing to provide backup to him and poor prioritizing. Both dispatchers (Neurohr and DeSalvo) testified the Grievant had engaged in similar kinds of conduct before, pulling dispatchers aside and questioning them until, literally, they were on the verge tears. The Grievant had been counseled before to be cautious in his interactions with the dispatchers, and should bring concerns about dispatcher performance to their regular supervisor rather than take it upon himself to "fix" the problem. In his role as a supervisor, it was incumbent on the Grievant to set an example for proper treatment of Department employees (particularly subordinates) and to operate within the proper limits of his role. On the record before me, I conclude the Grievant was abusive toward the dispatchers on the morning of July 31, and this was not an isolated event.

Next is the Grievant's exclamation he "didn't give a damn" about the citizens of Bartow. Did the Grievant mean this literally? I don't think so, inasmuch as the Grievant plainly had provided valuable service to the citizens for years. However, this outrageous comment is important. Even uttered only within the confines of police headquarters and to other Department personnel, there is always the potential for public disclosure. This kind of thoughtless declaration holds the potential for very real damage to the Department and its relationship with the citizens. An important quality of leadership is the ability to exercise a reasonable measure of

self control; for an employee with law enforcement authority, this is especially important. The comment demonstrates a fundamental and disturbing failure on the Grievant's part to step back and assess the events of the traffic stop and dispatch clearly. The Grievant then compounded his mistake by awakening Communications Supervisor Kim Johnson at about 5:00 AM, more than an hour after the failed traffic stop. This was not an emergency situation that required a supervisor to be roused during her off-duty hours, and again suggests the action of an employee preoccupied with his own agenda and prone to losing perspective. The Department reasonably can expect better in a supervisor.

Finally, there is the Grievant's report to Capt. Green. It was the Grievant himself who brought the events of July 31 to the attention of Capt. Green on August 2 – not to warn Capt. Green that he (the Grievant) may have stepped over the line in some way, but instead to continue his complaint that Dispatcher Neurohr had not performed her job correctly and had jeopardized his safety. By this time, the Grievant knew Communications Supervisor Johnson was investigating the matter. In addition, enough time had elapsed that the Grievant himself should have been able to form a better assessment of the situation and perhaps regain some perspective. However, as Capt. Green noted in his testimony, at no time during his August 2 report did the Grievant mention the encounter with the dispatchers, nor was there any acknowledgment by the Grievant that he in fact had backup on the morning of July 31, even if this fact may have been omitted from the CAD printout.

Like Chief Sandvik, I find the Grievant's report to Capt. Green was misleading. It is unclear whether the Grievant affirmatively intended to mislead Capt. Green, or simply did not bother to conduct the minimal inquiry needed to confirm the facts. In connection with a management decision to relieve him of supervisory duties because the Grievant lacked the level of judgment needed for the job, it makes little difference. After all, it was the Grievant who chose to bring the report alleging dispatcher error to Capt. Green and initiate an inquiry into the events of July 31. Before doing so, the Grievant had opportunity to research the situation further, either waiting for more feedback about the situation from Johnson or speaking with other police officers who were on duty July 31 and who heard the radio traffic (or even the three officers who provided backup to the Grievant at some point). Instead, the Grievant's report of the July 31 event omits key facts that the Grievant knew or should have known, and had an obligation to share with his superior.

Standing by themselves, I find that neither the Grievant's inappropriate interaction with the dispatchers nor his grossly inappropriate statement regarding the citizenry would warrant demotion. However, when these incidents are considered along with his incomplete and misleading report to Capt. Green two days later, and also considered alongside a variety of earlier incidents noted in the record, I find the Chief was justified in concluding the Grievant lacked the qualities needed to perform as a supervisor.

I therefore find the Department had just cause to demote the Grievant. The grievance is **DENIED**.

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Paul Greenberg, Arbitrator
Washington, D.C.

June 29, 2005