

IN THE MATTER OF THE ARBITRATION BETWEEN:

Roseau County

OPINION AND AWARD

And

BMS Case No. 20-PA-1211

**International Brotherhood
of Teamsters, Local 320**

Richard A. Beens, Arbitrator

APPEARANCES:

For the County:

**Ann R. Goering, Esq.
Ratwik, Roszak & Maloney, P.A.
730 Second Avenue South, Ste. 300
Minneapolis, MN 55402**

For the Union:

**Kevin M. Beck, Esq.
Kelly and Lemmons, P.A.
2350 Wycliff St., Ste. 200
St. Paul, MN 55114**

Date of Award: April 13, 2021

JURISDICTION

This arbitration arises pursuant to a collective bargaining agreement (“CBA”) between Roseau County (“Employer” or “County”) and the International Brotherhood of Teamsters Local 320 (“Union”).¹ Kelly Gustafson (“Grievant”) is employed by the County as a deputy sheriff and a member of the Union.

The following Opinion and Award is based on the parties’ joint submission of Stipulated Facts and exhibits. Each filed closing briefs on April 6, 2021 and argued their respective positions in a virtual hearing held on April 7, 2021.

ISSUES

1. *Did the County violate the collective bargaining agreement when it denied Grievant’s application for assignment to the Pine to Prairie Drug Task Force (“Task Force”) and, if so, what is the proper remedy?*
2. *Did the County constructively discipline Grievant without cause by assigning another employee to the Task Force position and, if so, what is the proper remedy?*

BACKGROUND FACTS

Under a joint powers agreement, Polk County and the Cities of Crookston and East Grand Forks initially created the Pine to Prairie Drug Task Force in 2008. Other governmental entities later joined and, finally, Roseau County became a full member in 2014. Each member appoints one full-time licensed peace officer to the Task Force. With this background in mind, the parties to this arbitration submitted the following Stipulated Facts:²

¹ Exhibit 1. [NOTE: The parties agreed to Stipulated Facts and, consequently, all exhibits referenced herein are Joint Exhibits.]

² The Stipulated Facts are listed below precisely as presented to the arbitrator.

1. Roseau County is a political subdivision of the State of Minnesota which operates a sheriff's department pursuant to Minn. Stat. Ch. 387. Steven J. Gust is the Roseau County Sheriff.
2. Teamsters Local 320 is the exclusive representative of all essential licensed deputies of the Roseau County Sheriff's Department.
3. Roseau County and Local 320 are signatories to a collective bargaining agreement.³
4. Grievant Kelly Gustafson is regular full-time Roseau County Deputy Sheriff. Grievant was hired by the Roseau County Sheriff's Department in 2001.
5. The Grievant received a written reprimand in March, 2007.⁴
6. The Grievant received a written reprimand in March, 2007.⁵
7. The Grievant received a verbal warning in June, 2007.⁶
8. The Grievant received a verbal warning in December, 2009.⁷
9. The Grievant received a written reprimand in May, 2013.⁸
10. The Grievant was suspended for two days in February, 2016.⁹
11. In June, 2018, the Grievant entered into the home of a drunk driving suspect without a warrant. The County Attorney concluded that criminal charges would not be brought.¹⁰ The individual brought suit against the Grievant and the County alleging a 42 U.S.C. 1983 violation, as well as negligent training, retention and supervision,

³ Exhibit 1.

⁴ Exhibit 2.

⁵ Exhibit 3.

⁶ Exhibit 4.

⁷ Exhibit 5.

⁸ Exhibit 6.

⁹ Exhibit 7.

¹⁰ Exhibit 21.

assault and battery as well as other claims. The civil suit was voluntarily dismissed December 19, 2019. It was still pending at the time the decision on who to appoint to the Task Force was being made.

12. The Pine to Prairie Drug Task Force (“Task Force”) was created pursuant to a 2008 joint powers agreement between Polk County and the cities of Crookston and East Grand Forks to coordinate efforts to investigate, apprehend, and prosecute drug, gang, and violent crime offenders. Roseau County was not a member at the time of its creation.
13. Roseau County joined as a full member of the Task Force organization in December 23, 2014. Each full member appoints one F.T.E. licensed peace officer to the Task Force.¹¹
14. Deputy Garrett Berg was hired as a deputy on December 12, 2011 and assigned to the Task Force on January 1, 2015. On September 19, 2019, Sheriff Gust removed the long-standing appointee to the Task Force, Deputy Garrett Berg.
15. Deputy Berg was assigned to the Roseau county Sheriff’s office drug interdiction team in 2012, more than three years prior to the County joining the Drug Task Force. Deputy Berg was approved to receive Investigator pay prior to his assignment to the Drug Task Force in 2015, due to a promotion approved by the County Board.

¹¹ Exhibit 8.

16. On September 23, 2019, Sheriff Gust sent an email to all Roseau County deputy sheriffs which stated in its entirety: *"Deputies, if you are interested in being on the Drug Task Force let me know. I may go into interviews for this to determine."*¹²
17. Grievant responded via email the next day, September 24, 2019, stating: *"ill [sic] put my hat in the ring."*¹³
18. The Grievant sent another email to Sheriff Gust on September 26, 2019 requesting to be considered for the Task Force.¹⁴ Sheriff Gust replied later that day thanking Grievant for his interest.¹⁵
19. On October 1, 2019, the Grievant inquired about a rumor that a decision had been made not to appoint him to the Task Force.¹⁶
20. On October 2, 2019, the Sheriff informed the Grievant that a decision on who to appoint had not been made, but that he had consulted with the Chief Deputy and the Task Force Commander, who *"decided that you would not be on [the Task Force] because of an active lawsuit with [Plaintiff] came up and it was decided you would not be on [the Task Force]. This is comparable to [Garret Berg]'s issue and why he was taken off too."*¹⁷
21. The Grievant responded to the Sheriff's email on October 4, 2019, stating: *"if I have to wait until that is over with to be considered for openings so be it. im ok with that."*¹⁸

¹² Exhibit 9.

¹³ Id.

¹⁴ Exhibit 10.

¹⁵ Exhibit 11.

¹⁶ Exhibit 12.

¹⁷ Exhibit 13.

¹⁸ Exhibit 14.

22. The Grievant went on the state: *"If my opinion, if it counts for anything, put Devin on the task force. he has the drive and motivation for it."*¹⁹
23. By email dated October 21, 2019, Sheriff Gust confirmed that Devin Corneliusen had been selected to the Pine to Prairie Drug Task Force.²⁰
24. Deputy Corneliusen had been hired as a temporary part-time deputy in 2017 and was classified as a regular part-time deputy sheriff on February 13, 2018. Deputy Corneliusen was classified as a regular full-time deputy on November 12, 2019. Deputy Corneliusen is Sheriff Gust's nephew.
25. Since being assigned to the Task Force, Deputy Corneliusen has been promoted to Investigator, which is accompanied by a one-grade increase. The appointment to the Task Force itself does not include any additional compensation and does not result in a promotion to investigator.
26. On or about October 30, 2019, the Union filed Grievance #7027 alleging that Grievant was denied appointment to the Task Force in violation of Articles 6 and 12 of the CBA. The requested remedy was to assign the Grievant to the Pine to Prairie Drug Task Force.²¹
27. Sheriff Gust denied the grievance at Step 1 via letter dated October 31, 2019 citing Articles 5 and 10 of the CBA.²²
28. The Union moved the grievance to Step 2 on November 4, 2019, via email from BA Meunier to Sheriff Gust.²³

¹⁹ Id.

²⁰ Exhibit 15.

²¹ Exhibit 16.

²² Exhibit 17.

²³ Exhibit 18.

29. At the Step 2 meeting held on November 21, 2019, Sheriff Gust said that Grievant was denied the position because he was involved with a pending lawsuit, because Grievant had other things in his personnel file, referring to the Grievant's disciplinary history.
30. The County issued to Step 2 denial letter on or about November 25, 2019 referencing §§ 6.3 and 10.3 of the CBA.²⁴
31. The grievance was appealed to arbitration by letter from BA Meunier to Coordinator Pelowski dated December 5, 2019.²⁵

APPLICABLE CONTRACT PROVISIONS²⁶

Article 5. Employer Authority

- 5.1 *It is recognized that, except as expressly stated herein the Employer shall retain Whatever rights and authority are necessary for it to operate and direct the affairs of the Employer in all its various aspects, including, but not limited to, the right to direct the working forces; to plan, direct and control all the operations and services of the Employer; to determine the methods, means, organization and number of personnel by which such operations and services are to be conducted; to assign overtime; to determine whether goods or services should be made or purchased; to hire, promote, demote, suspend, discipline, discharge or relieve employees due to lack of work or other legitimate reasons; to make and enforce rules and regulations; and to change or eliminate existing methods, equipment or facilities.*
- 5.2 *Any term and condition of employment not specifically established or modified by this Agreement shall remain solely within the discretion of the Employer to modify, establish, or eliminate.*

²⁴ Exhibit 19.

²⁵ Exhibit 20

²⁶ Exhibit 1.

Article 6. Seniority

- 6.1 *Seniority shall be determined by the length of full-time compensated service by classification within the bargaining unit. Reduction of the work force will be accomplished on the basis of classification seniority with the least senior employee in the classification laid off first recalled last.*
- 6.2 *The Employer is committed to hiring the most qualified candidate for County service. When all other qualifications, as determined by the Employer, are equal, the Employer shall select the applicant with the greater service seniority for the job opening.*
- 6.3 *Positions where incumbents are reclassified or transferred shall not be considered vacant or newly created for the purpose of bidding.*

Article 10. Work schedules

- 10.3 *Work shifts, staffing schedules and the assignment of employees thereto, shall be established by the Employer.*

Article 12. Discipline

- 12.1 *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; or*
 - E. *Discharge.*

OPINION

The instant case involves a contract interpretation in which the arbitrator is called upon to determine the meaning of some portion of the collective bargaining agreement between the parties. The arbitrator may refer to sources other than the collective bargaining agreement for enlightenment as to the meaning of various provisions of the contract. The essential role of the arbitrator, however, is to interpret the language of the

collective bargaining agreement with a view to determining what the parties intended when they bargained for the disputed provisions of the agreement. Indeed, the validity of the award is dependent upon the arbitrator drawing the essence of the award from the plain language of the agreement. It is not for the arbitrator to fashion his or her own brand of workplace justice nor to add to or delete language from the agreement. In undertaking this analysis, an arbitrator will first exam the language used by the parties. This objective approach *"...holds that the "meaning" of the language is that meaning that would be attached to the integration by a reasonably intelligent person acquainted with all the operative usages and knowing all the circumstances prior to and contemporaneous with the making of the integration.*"²⁷ If the language is clear and unambiguous, that is the end of the inquiry. A writing is ambiguous if, judged by its language alone and without resort to parol evidence, it is reasonably susceptible of more than one meaning.²⁸

As a beginning point, there is no question that Grievant has far more seniority than the deputy assigned to the Pine to Prairie Drug Task Force. At the time in question Deputy Corneliusen had been with the department less than two years – compared to Grievant's 18-year tenure. Nevertheless, Deputy Devin Corneliusen was assigned rather than Grievant.²⁹ In doing so, the Union contends the Employer violated two provisions of the CBA: first, they argue Article 6, the seniority provision, was violated and; second, they contend the Sheriff, in effect, disciplined Grievant.³⁰

²⁷ Elkouri & Elkouri, *How Arbitration Works*, Eighth Edition, (2016), Chap. 9.1.B.i

²⁸ *Metro Office Parks, Co. v. Control Data Corp.*, 205 N.W.2d 121 (1973).

²⁹ See Exhibit 14: Only the irony-challenged would fail to note that it was Grievant who first suggested appointing Deputy Corneliusen to the task force.

³⁰ Exhibit 16.

The County contends seniority is not applicable under the Stipulated Facts. The vacancy on the task force is not a “new” job within the sheriff’s department. It is a simple reassignment of duties within the classification of deputy sheriff and, therefore, falls within the Employer’s authority under CBA Articles 5.1 and 6.3. Importantly, Article 5.2 also provides, *“Any term or condition of employment not specifically established or modified ... shall remain solely within the discretion of the Employer...”*

Interpretation of Articles 6.2 and 6.3 lie at the heart of this case. The plain language or the former compels consideration of seniority and relative qualifications only when “*hiring.*” This clear, unambiguous language can only apply when a new position is created within the sheriff’s office. Juxtaposed to this is the wording of 6.3, *“Positions where incumbents are reclassified or transferred shall not be considered vacant or newly created for the purpose of bidding.”* Once again, the language is clear and unambiguous. This carves out an obvious exception to the seniority provision contained in 6.2. It is, in essence, a reiteration of the Sheriff’s right, *“to direct the working forces”* as set out in Article 5.1. Further, the Joint Powers Agreement between task force members specifically states, *“Each full Member shall assign a peace officer to be an Agent on the task force, and such assignment shall be the principal assignment of such peace officer.”*³¹ (Emphasis added)

The Union argues that management rights as set out in Article 5.1 are modified by 6.2. While true to a limited extent, the Union fails to deal with the Article 6.3 exception considered above. Last, the CBA contains no modification of the Employer’s right to transfer deputy sheriffs from one job to another within the department. If the joint powers

³¹ Exhibit 8, Sections 3.5.1, 7.1, and 7.7.

agreement required a member to hire a new peace officer specifically for placement on the Task Force, we might have a different case. However, those are not the facts before me.

The fact that the situation at issue is merely a transfer of duties within the classification of deputy sheriff is bolstered by the following points: Assignment to the Pine to Prairie Drug Task Force contains no mandatory increase in rank or pay. It simply places the deputy's duties in a different setting. While both the prior incumbent, Garrett Berg, and the newly assigned deputy, Devin Corneliusen, were ultimately promoted to Investigator, this, too, is a power left to the Sheriff and, based on the clear language of the CBA, irrelevant to the current issue. CBA Article 5.1 specifically gives the Employer an unfettered right to "promote" employees as he sees fit. There is no evidence that right is in any way tied to or conditioned on assignment to the task force.³²

In summary, Articles 5.1 and 6.3 give the Sheriff a clear and unambiguous right to assign any of the department's licensed deputies to the task force.

While not raised in their final brief or oral argument, the original grievance contends that failure to appoint Grievant is a de facto disciplinary action.³³ I disagree. Discipline is universally defined as any punishment up to and including discharge.³⁴ CBA Article 12 set out above details five forms of disciplinary actions ranging from Oral reprimand to Discharge. None of these disciplinary forms were foisted upon Grievant in this instance. Failure to obtain a preferred assignment is not a punishment. Grievant lost no rank, pay, time, or benefits – his position within the Roseau County Sheriff's department was unchanged when Corneliusen was assigned to the task force. Last, Grievant's failure to

³² Id.

³³ Exhibit 16.

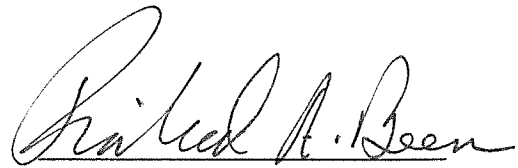
³⁴ National Academy of Arbitrators, *The Common Law of the Workplace*, Second Edition (2005), § 6.1.

be transferred will result in no adverse information in his personnel file. The Union contention that this was a de facto disciplinary action is totally without merit.

AWARD

The Grievance is DENIED.

Dated: April 13, 2021

A handwritten signature in black ink, reading "Richard A. Beens". The signature is written in a cursive style with a large, looping initial "R".

Richard A. Beens, Arbitrator