

IN THE MATTER OF THE ARBITRATION BETWEEN

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|--------------------------------|---|---|-------------------------------|
| PIERCE COUNTY DEPUTY SHERIFFS' | |) | |
| INDEPENDENT GUILD, LOCAL 1899, |) |) | OPINION AND AWARD |
| |) |) | |
| UNION, |) |) | PERC CASE NO. 135933 - P - 22 |
| |) |) | |
| -AND- |) |) | [REDACTED] GRIEVANCE |
| |) |) | |
| PIERCE COUNTY, |) |) | |
| |) |) | |
| EMPLOYER. |) |) | |
| |) |) | |
| _____ |) |) | |

BEFORE: ROBIN A. ROMEO, ESQ
 ARBITRATOR

REPRESENTING
THE UNION: CHRIS L. WYROSTEK
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PROCEDURAL BACKGROUND

The union, Pierce County Deputy Sheriffs' Independent Guild, Local 1899 (Guild) and Pierce County (County) are parties to a collective bargaining agreement (CBA) dated January 1, 2018 - December 31, 2021, covering a bargaining unit of employees, including the positions of Deputy, Sergeant, Detective and Lieutenant in the Pierce County Sheriffs' Department (PCSD).

The Guild filed a grievance pursuant to the grievance procedure in the CBA on behalf of its member [REDACTED] ([REDACTED]), a Detective employed in the PCSD. The grievance alleges a violation of the CBA arising out of the unpaid disciplinary suspension of [REDACTED]. The grievance was unresolved at the steps of the grievance procedure.

On September 27, 2022, the Guild filed a request with the Public Employment Relations Commission to appoint an arbitrator pursuant to RCW 41.58.070 from the Law Enforcement Disciplinary Grievance Arbitration Panel. On September 27, 2022, the undersigned arbitrator was notified of her selection pursuant to RCW 41.58.070(13) as the neutral arbitrator to resolve the dispute. On April 25 and 26, 2023, hearings were held in Tacoma, WA. On June 2, 2023, the parties submitted and exchanged post-hearing briefs.

On June 18, 2023, the Guild submitted a motion to reopen the hearing to allow for the testimony of an additional witness. On June 27, 2023, the Employer submitted a reply brief. The undersigned arbitrator granted the motion to reopen the hearing and on October 10, 2023, an additional day of hearing was held. On November 9, 2023, the parties submitted and exchanged supplemental post-hearing briefs.

Both parties were afforded a full and fair opportunity to present witnesses and evidence into the record. Opening statements were made. Witnesses were sworn under oath and subject to direct, cross, redirect and recross examination. The representatives conducted themselves in a professional and cordial manner and advocated zealously on behalf of their clients.

THE ISSUE

The parties were able to stipulate to the following issue for decision by the arbitrator:

Did Pierce County and its Sheriffs' Department have just cause to suspend Detective [REDACTED] without pay, and if not, what is the appropriate remedy?

RELEVANT CONTRACT AND POLICY PROVISIONS

ARTICLE 4 - MANAGEMENT RIGHTS AND RESPONSIBILITIES

The Employer retains and reserves all powers and authority to manage its operations in an effective manner with the sole and unquestioned right and prerogative in accordance with applicable law, regulations, and the Pierce County Charter, subject only to the limitations expressly stated in this Agreement.

...

8) To discipline, suspend and discharge employees for just cause...

POLICY MANUAL

Section 100.5 Constitutional Requirements

All members shall observe and comply with every person's clearly established rights under the United States and Washington Constitutions.

Section 340.3

The following list of causes for disciplinary action constitutes a portion of the disciplinary standards of this department. This list is not intended to cover every possible type of misconduct and does not preclude the recommendation of disciplinary action for specific action or inaction that is detrimental; to efficient department service.

...

340.3.5 - Performance

- ...
- (b) Unsatisfactory work performance including, but not limited to, failure, incompetence, inefficiency or delay in performing and/or carrying out proper orders, work assignments or instruction of supervisors.

CONSTITUTION OF THE UNITED STATES
AMENDMENT IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation and particularly describing the places to be searched, and the persons or things to be seized.

RELEVANT FACTUAL BACKGROUND

At the time of the grievance, [REDACTED] ([REDACTED]), was a detective employed by the Pierce County Sheriffs' Department (PCSD) and assigned to the Special Investigations Unit (SIU). [REDACTED] joined the PCSD in 1999, and became a Detective in 2010. In 2020, [REDACTED] had been a member of the SIU for 10 or 11 years. Subsequent to the grievance, [REDACTED] was promoted to the rank of Sergeant.

In January 2020, [REDACTED] was investigating a suspected drug trafficker, [REDACTED] ([REDACTED]). As part of the investigation, [REDACTED] believed he had probable cause to believe [REDACTED] was in possession of illegal drugs with the intent to sell, other drug related items and firearms. [REDACTED] was using a confidential informant as part of the investigation. Based upon information received from the confidential informant, including [REDACTED]' address, [REDACTED] obtained a search warrant on January 15, 2020, signed by Judge [REDACTED], (Warrant One).

Warrant One described the location of the area to be searched:

An approximately 288 square foot unmarked apartment located on the lower level of a mobile home/structure commonly known as 11318 201st Ave East in Bonney Lake. There are at least 3 separate apartments on the lower level (northwest side) each accessed their own door. The particular structure/apartment to be searched is the middle door of three. The door is white in color. This converted apartment has no access to the main home on the property and one has to walk around a well worn path on the south side around the main structure to reach the backside where the doors are.

[REDACTED] conducted a threat assessment and asked the SWAT team to conduct reconnaissance of the property prior to service of the warrant. During the reconnaissance, conducted by Detective [REDACTED] ([REDACTED]) and SWAT Team Leader [REDACTED] ([REDACTED]), the SWAT team expressed confusion about the specific door to be entered. They observed a white door with a glass insert on the upper part of the door and a pair of glass French doors.

[REDACTED] texted [REDACTED] a photograph of the doors at the property. [REDACTED] then conferred with his confidential informant who identified the door as the one on the right. Upon relaying this information to [REDACTED], [REDACTED] asked [REDACTED] to obtain a new warrant. [REDACTED] redrafted the warrant as follows:

An approximately 288 square foot unmarked apartment located on the lower level of a mobile home/structure commonly known as 11318 201st Ave East in Bonney Lake. There are multiple doors on this lower level. The particular structure/apartment to be searched is the white door with a glass upper insert located on the northeast corner of the lower level of the structure and is white in color. This converted apartment has no access to the main home on the property and one has to walk around a well worn path on the south side around the main structure to reach the backside where the doors are.

[REDACTED] submitted the warrant (Warrant Two) via email to the on-call Judge, Judge [REDACTED], who signed it on January 20, 2020. The warrant was submitted to the on-call judge as it was a holiday weekend instead of the original Judge, Judge [REDACTED].

On the morning of January 21, 2020, the SWAT team assembled to execute Warrant Two, and held a preliminary briefing. The SWAT team then executed Warrant Two by entering the apartment with the glass upper insert. During this search, [REDACTED] exited the apartment with the middle door, next to the apartment where the SWAT team was present. [REDACTED] then took [REDACTED] for questioning at a nearby police station.

During its search, the SWAT team determined the person they encountered was not [REDACTED] and none of the expected illegal drugs, other drug related items and firearms were present. Subsequently, [REDACTED]'s supervisor, Lt. [REDACTED] ([REDACTED]) arrived on scene and a discussion ensued between [REDACTED], who returned to the scene, [REDACTED] and SWAT Commander [REDACTED] ([REDACTED]).

The discussion concerned whether the SWAT team could enter the apartment with the French doors, that [REDACTED] was seen exiting. The question arose whether Warrant One would allow lawful entry into that apartment. [REDACTED] argued that Warrant One was not valid. A disagreement ensued and the SWAT team left the scene.

[REDACTED] then observed Detective [REDACTED] ([REDACTED]) outside of the apartment [REDACTED] had exited. Noises were coming from the apartment. [REDACTED] and [REDACTED] then conducted a “protective sweep” of the apartment to clear it for hazard. They did not touch anything or remove any property from the apartment. [REDACTED] then left the location and returned to his interview of [REDACTED]. The apartment was later entered, searched and evidence recovered by other members of the SIU.

[REDACTED] then contacted the Chief of the Criminal Investigation Bureau, [REDACTED] ([REDACTED]) to express his concern about what he perceived as the illegal service of Warrant One on [REDACTED]’ apartment by [REDACTED]. [REDACTED] spoke to [REDACTED] and then issued a directive about procedures going forward.

[REDACTED] then contacted several attorneys at the Pierce County Prosecuting Attorney’s office (PCPA), in an attempt to trigger an internal affairs investigation of [REDACTED]. Both [REDACTED] and [REDACTED] pushed for the investigation. The Deputy Prosecuting Attorney responsible for reviewing the case, [REDACTED] ([REDACTED]) determined no charges could be brought against [REDACTED] because the evidence was illegally obtained. [REDACTED] also contacted attorneys at the PCPA and received differing opinions.

On February 24, 2020, Undersheriff [REDACTED] ([REDACTED]) initiated an internal investigation of [REDACTED] for service of a search warrant no longer valid at the time of service. The investigation was conducted by Lt. [REDACTED] ([REDACTED]). On February 25,

2020, [REDACTED] was given a Notice of Investigation for Unsatisfactory Job Performance due to an allegation he served a search warrant no longer valid at the time of service.

[REDACTED] then went to an outside legal authority for an opinion on the validity of the warrant. [REDACTED] spoke to [REDACTED] at the Washington Association of Prosecuting Attorneys and asked for her guidance on the constitutionality of the service of Warrant One. She was of the opinion that Warrant One was invalid and a new warrant should have been obtained.

After being given the opinion Warrant One was not valid, [REDACTED] amended the investigation of [REDACTED] to include a constitutional violation. The investigation was reviewed by [REDACTED] ([REDACTED]) who issued findings and recommended [REDACTED] receive discipline for unsatisfactory job performance.

Chief [REDACTED] ([REDACTED]) next reviewed the investigation, issued his report and recommended [REDACTED] receive discipline not only for unsatisfactory job performance of an eight (8) hour suspension without pay but also for a constitutional violation for a total of a penalty of a forty (40) hour suspension without pay. The Sheriff, [REDACTED] ([REDACTED]) reviewed the findings and reports and sustained both violations which were imposed upon [REDACTED] with the penalties being served simultaneously

POSITION OF THE PARTIES

EMPLOYER

Pierce County argues there was just cause to discipline Detective [REDACTED] for violating Pierce County Sheriffs' Department policies concerning a constitutional requirement and work performance. The County argues the burden of proof is a preponderance of evidence. The County argues the rules were reasonable, there was adequate notice, the investigation was significant, there is proof of misconduct, there was equal treatment and the discipline penalty is appropriate.

The County argues the burden of proof is a preponderance of the evidence. The County argues it is not obligated to disprove there were ulterior motives for the investigation or the decision to impose discipline. The County argues the Guild has the burden of proof to show [REDACTED] was disciplined for reasons other than a policy violations.

The County argues it has the power to establish rules of conduct and Policy 340 establishes reasonable work standards for its employees. The County argues protection from unreasonable search and seizure is one of the most sacrosanct rights of American citizens. The County argues it holds its employees to the highest standards to protect those rights and violation of this policy erodes public trust and exposes the County to liability.

The County argues [REDACTED] had adequate notice of the policy to protect against unreasonable search and seizure. The County argues [REDACTED] was aware of the need to obtain a valid search warrant with specific particularity. The County argues [REDACTED] was aware he could be disciplined for violating this need.

The County argues it conducted a sufficient and thorough investigation of policy violations by [REDACTED]. The County argues [REDACTED]'s review included interviewing

[REDACTED], prosecuting attorneys and PCSD officers from SIU and SWAT. The County argues [REDACTED]'s reviewed the factual record and recommendations before making his recommendation. The County argues [REDACTED]'s second review included another review of investigative materials. The County argues the Sheriff, [REDACTED], completed a final review of the factual record and recommendations before imposing discipline.

The County argues the investigation was fair and objective. The County argues [REDACTED] received proper notice of the initiation of the investigation, was updated on its progress and given an opportunity to rebut information and provide other input. The County argues there is no evidence of discrimination or animus. The County argues the personal opinions of other co-workers who do not get along with [REDACTED] had no impact on [REDACTED] or [REDACTED]'s decision to impose discipline.

The County argues there is proof of misconduct and unsatisfactory work performance. The County argues [REDACTED] and others involved in the operation were interviewed and there is little dispute about the facts. The County argues [REDACTED]'s conduct in entering Door Two under the authority of Warrant One is not in dispute. The County argues the entry is not up for debate and whether he had legal authority to enter the apartment is up to the arbitrator to determine.

The County argues the rules were applied consistently. The County argues the other instances of employees executing improper warrants are distinguishable in that there is a difference between misconduct and mistake. The County argues no misconduct occurred in executing Warrant Two even though it was the incorrect address, however, [REDACTED] knew Warrant One was

invalidated due to lack of particularity. The County argues [REDACTED] had only to call a judge and obtain another warrant to enter the apartment.

The County argues the proposed discipline penalty is appropriate. The County argues a constitutional violation is a very serious transgression and a thirty-two (32) hour suspension with an additional eight (8) hours for unsatisfactory performance is appropriate. The County argues the imposition of the penalty had a positive effect on [REDACTED] as his work performance improved and he was been promoted to Sergeant subsequently. The County argues reversing the discipline will impact the morale of other employees who observed [REDACTED] execute an invalid warrant, and impact its ability to discipline other employees who execute invalid warrants in lesser situations or as a result of a mistake.

UNION

The Guild argues the County cannot satisfy the tests for just cause and there was no just cause to discipline Detective [REDACTED]. The Guild argues the burden of proof is a clear and convincing evidence standard. The Guild argues the County is unable to establish [REDACTED] committed a constitutional violation. The Guild argues the County cannot establish unsatisfactory job performance. The Guild argues the investigation was not fair and objective and free from discrimination. The Guild argues the County did not have sufficient evidence to impose discipline. The Guild argues the rules and regulations were not consistently applied. The Guild argues the degree of discipline is not proportional to the offense. The Guild argues the investigation was not

adequate. The Guild asks the arbitrator to draw an adverse inference from the County's failure to call the Sheriff, [REDACTED], as a witness on its direct case.

The Guild argues the burden of proof is on the County. The Guild argues the higher standard of proof is not a preponderance of the evidence as preferred by the County, but clear and convincing evidence. The Guild argues in cases concerning criminal or stigmatizing conduct, arbitrators use the higher standard. The Guild argues a finding of a constitutional violation is stigmatizing within the realm of law enforcement and has significant potential impact on [REDACTED]'s career and could constitute potential impeachment evidence affecting cases where [REDACTED] was called upon to testify.

The Guild argues the County cannot establish a constitutional violation. The Guild argues the County charged him with serving a search warrant no longer believed to be valid at the time of service. The Guild argues [REDACTED] never served the warrant and cannot be disciplined for something he did not do. The Guild argues [REDACTED] instead conducted a permissible protective sweep of the apartment. The Guild argues there was a discussion occurring about the validity of the Warrant One to enter the apartment [REDACTED] was seen exiting but [REDACTED] did not serve the warrant. The Guild argues [REDACTED] instead checked with [REDACTED] whether the apartment had been "cleared", it had not, and even though [REDACTED] knew [REDACTED] had exited the apartment, he remained concerned due to commotion behind the door, his knowledge of locations associated with drug trafficking and the potential harm to colleagues standing nearby. The Guild argues [REDACTED] "cleared" the apartment and then returned to continue the discussion. The Guild argues the "sweep" took

seconds, nothing was touched or evidence taken at this time. The Guild argues the County unsuccessfully attempted to discipline [REDACTED] for the subsequent search conducted by others who obtained evidence and should not now shift blame to [REDACTED].¹ The Guild argues other employees, [REDACTED] and [REDACTED], validated the conduct of [REDACTED] as a protective sweep.

The Guild argues the County cannot establish that [REDACTED] is guilty of unsatisfactory job performance. The Guild argues the County has to establish [REDACTED] exhibited failure, incompetence, inefficiency, or delay in performing or carrying out proper orders, work assignments or instruction of supervisors. The Guild argues the County has not identified what specific conduct is alleged to be unsatisfactory job performance. The Guild argues this failure is inadequate notice of wrongdoing required by due process. The Guild argues the mere listing of rules is not sufficient to provide notice. The Guild argues that [REDACTED] apparently believed the unsatisfactory job performance was due to not getting an addendum to the warrant, not identifying the location better and believing he had two separate warrants. The Guild argues [REDACTED] merely states he believed [REDACTED] could have done better. The Guild argues [REDACTED]'s report also does not specifically identify the unsatisfactory performance.

The Guild argues the investigation was not fair, objective and free from discrimination. The Guild argues the actions of [REDACTED] improperly influenced the investigation, as the initiator of the investigation, he had a pre-determined view a violation had been committed and sought out inappropriate additional evidence to support that view. The Guild argues obtaining an outside

¹ *Pierce County Deputy Sheriff's Independent Guild v. Pierce County*, PERC Case 134898-P-22, November 21, 2022.

review on the validity of the warrant by an outside agency was inappropriate and unfair. The Guild argues the actions of [REDACTED] and [REDACTED], who harbored obvious dislike of [REDACTED], by providing critical reports of [REDACTED] to the PCSD, going outside of the chain of command to push for an investigation of [REDACTED], being dissatisfied with [REDACTED]'s handling of the incident and contacting [REDACTED] as leading to the investigation was improper.

The Guild argues the County did not have sufficient evidence to impose discipline. The Guild argues the crux of the charges against [REDACTED] is the service of Warrant One as an invalid warrant but there has been no determination that Warrant One is invalid. The Guild argues no judge determined the warrant to be invalid and any evidence it was not valid is merely opinion evidence. The Guild argues there were conflicting legal opinions on whether Warrant One was valid.

The Guild argues the County has not applied the rules and discipline consistently. The Guild argues there were two prior instances of a violation of constitutional rights and unsatisfactory work performance where there was no investigation and no discipline imposed. The Guild argues the "River Road" incident, is appropriate precedent where the SWAT team entered the wrong door and detained the incorrect individuals, and no one was investigated or disciplined. The Guild argues the County's argument distinguishing this case is inadequate. The Guild argues a second incident where an expired warrant was served and no investigation or discipline occurred is also relevant. The Guild argues imposing discipline after lax enforcement is improper and may only be done after adequate notice of a change in policy is given.

The Guild argues the degree of discipline is not proportional to the offense. The Guild argues even if [REDACTED]'s entry in the apartment was unconstitutional, [REDACTED] was only present for a matter of seconds and secured no person or evidence. The Guild argues the County is impermissibly attempting to impute the conduct of those who actually searched the apartment onto [REDACTED]. The Guild argues there was no progressive discipline, [REDACTED] had not been properly trained in search warrants, his record wasn't considered and the County did not explain how it recommended a forty (40) hour suspension.

The Guild argues the investigation was not adequate. The Guild argues [REDACTED] never looked into the River Road or the expired warrant case despite being urged to. The Guild argues [REDACTED] did not consider mitigating information in violation of PCSD policy requiring all information to be considered in recommending discipline.

The Guild asks the arbitrator to rescind the discipline, purge any reference to the discipline from [REDACTED]'s personnel file, make [REDACTED] whole for lost wages, benefits, seniority and rank, with interest, and any other relief that may be appropriate including causing the County to post the decision on its website and at PCSD facilities and notify each member of the Guild of the arbitrator's decision. Additionally, the Guild asks in the supplemental brief, reimbursement of the costs of obtaining a copy of [REDACTED]'s transcript, in the amount of \$2,556.14.

OPINION

In a disciplinary case, the burden of proof is on the employer to prove guilt of wrongdoing.² The standard to support a decision to discipline or discharge is not settled and arbitrators have used preponderance of the evidence, clear and convincing evidence, and beyond a reasonable doubt.

In cases involving criminal or stigmatizing conduct, arbitrators have applied a higher burden of clear and convincing evidence and in some matters have heightened the standard to beyond a reasonable doubt. Increasingly, arbitrators apply the clear and convincing standard not just for criminal cases but for all discharge cases as well.³

The parties have included in their collective bargaining agreement the requirement that the Employer may only discipline employees for “just cause”. Just cause has traditionally been defined as the seven tests outlined by Arbitrator Carroll Daughtery in *Enterprise Wire Co.*, 46 LA 359 (1966). Those tests are:

1. Did the company give to the employee forewarning or foreknowledge of the possible or probable consequences of the employee’s conduct?
2. Was the company rule or managerial order reasonable related to: (a) the orderly, efficient, and safe operation of the company’s business and (b) the performance that the company might properly expect of the employee?
3. Did the company, before administration of discipline to the employee, make an effort to discover whether the employee did in fact violate or disobey a rule or order of management?
4. Was the company’s investigation conducted fairly and objectively?

² *Discipline and Discharge in Arbitration*, Norman Brand, Ed., (3rd Ed. 2014) p.15-23

³ *Id.* At 15-24 and 25.

5. At the investigation, did the “judge” obtain substantial evidence or proof that the employee was guilty as charged.
6. Has the company applied its rules, orders, and penalties, even handedly and without discrimination to all employees?
7. Was the degree of discipline administered by the company in a particular case reasonable related to: (a) the seriousness of the employee’s proven offense and (b) the record of the employee in his service with the company?

As one arbitrator put it: “The essence of ‘just cause’ is that the Employer, in carrying out its inherent or express right to discipline employees, must do so in a manner that is not unreasonable, arbitrary, capricious or discriminatory.”⁴

The parties here differ on the burden of proof to be used by the arbitrator. The employer, Pierce County (County), urges use of the standard of clear and convincing evidence. The union, Pierce County Deputy Sheriffs’ Independent Guild (Guild) urges use of the standard of a preponderance of the evidence. Given the potential for considering a violation of constitution rights stigmatizing conduct, the higher standard is appropriate.

Using the higher standard of the burden of proof, I find the County has not proven a violation of the disciplinary charges. I do not find Detective [REDACTED] ([REDACTED]) is guilty of committing a constitutional violation or guilty of unsatisfactory job performance.

⁴ *Discipline and Discharge in Arbitration*, Norman Brand, Ed., (3rd Ed. 2014) p. 2-9.

The evidence shows [REDACTED] conducted a “protective sweep” of the apartment in question. There were numerous references and confirmations that [REDACTED]’s actions were a protective sweep or clearing of the apartment rather than a search pursuant to a search warrant. The County’s case is premised upon the idea that [REDACTED] executed an invalid warrant. He did not serve a warrant. He did not obtain evidence. He did not retain any persons. Given the fact he was not serving a warrant, he cannot be said to have conducted an unconstitutional search and seizure. Accordingly, he cannot be said to have violated the Policy 340. Further, given the lack of specificity of any other aspects of an unsatisfactory job performance, there are no other actions upon which discipline can be based.

Even if [REDACTED] executed an invalid search warrant, The County has failed to establish there was just cause to discipline [REDACTED]. The rules and regulations were not applied evenly. The investigation was not free from bias and discrimination.

Examining each test outlined in *Enterprise Wire Co.*:

1. Did the company give to the employee forewarning or foreknowledge of the possible or probable consequences of the employee’s conduct? Yes, [REDACTED] was aware of the Policy Manual and policies in section 340.
2. Was the company rule or managerial order reasonable related to: (a) the orderly, efficient, and safe operation of the company’s business and (b) the performance that the company might properly expect of the employee? Yes, the County has the right to expect its employees will not commit constitutional violations.

3. Did the company, before administration of discipline to the employee, make an effort to discover whether the employee did in fact violate or disobey a rule or order of management? No, there was no effort to determine whether [REDACTED] actually served the warrant or whether he conducted a permissible protective sweep of the premises. Every individual involved in the review process assumed [REDACTED] executed the warrant.

4. Was the company's investigation conducted fairly and objectively? No, the investigation occurred as a result of the efforts of [REDACTED] and [REDACTED], who disliked [REDACTED] and went out of their way to obtain legal opinions, contact the PCPA and push for an investigation, thus, tainting the investigation.

5. At the investigation, did the "judge" obtain substantial evidence or proof that the employee was guilty as charged. For the reasons stated above, there was not substantial evidence of guilt.

6. Has the company applied its rules, orders, and penalties, even handedly and without discrimination to all employees? No, other employees did not receive the same treatment as [REDACTED] as seen in the River Road case and the expired warrant case.

7. Was the degree of discipline administered by the company in a particular case reasonable related to: (a) the seriousness of the employee's proven offense and (b) the record of the employee in his service with the company? No, the offense was not proven and there was no evidence [REDACTED]'s record of employment was considered.

While it is true that law enforcement officers are now subject to heightened scrutiny for violating the constitutional rights of the members of the public, and an employer is charged with ensuring such rights are not violated, those circumstances do not exist here. For all of the above reasons,

the County has not satisfied the seven tests for just cause under the CBA and the grievance must be sustained.

REMEDY

The Guild has asked as a remedy to rescind the discipline, purge any reference to the discipline from [REDACTED]'s personnel file, make [REDACTED] whole for lost wages, benefits, seniority and rank, with interest, and any other relief that may be appropriate including causing the County to post the decision on its website and at PCSD facilities and notify each member of the Guild of the arbitrator's decision. Additionally, the Guild asks in the supplemental brief, reimbursement of the costs of obtaining a copy of [REDACTED]'s transcript, in the amount of \$2,556.14.


The appropriate remedy is to rescind the discipline, purge any reference to the discipline from [REDACTED]'s personnel file, make [REDACTED] whole for lost wages, benefits, seniority and rank, and in accordance with any applicable law, interest. As for the posting of the decision, I do not find that remedy is appropriate or necessary. The decision will be posted on the PERC website and may be accessed there. There is no authority or precedent to do otherwise. As for the cost of obtaining the transcript for another proceeding, there is no authority or precedent allowing for such costs.

AWARD

The grievance is sustained. The County did not have just cause to suspend Detective [REDACTED] without pay.

[REDACTED]'s suspension is rescinded and all reference to it shall be purged from PCSD records and files.

[REDACTED] is to be made whole for lost wages, benefits, seniority, rank and in accordance with any applicable law, interest.

/s/ 
Robin A. Romeo
Arbitrator

Dated: December 11, 2023