

FEDERAL MEDIATION AND CONCILIATION SERVICE

In the Matter of the Arbitration between

POLICEMEN’S BENEVOLENT & PROTECTIVE
ASSOCIATION LABOR COMMITTEE

and

VILLAGE OF FREEBURG, ILLINOIS
FREEBURG POLICE DEPARTMENT

(Grievant Kent Ahlers, Termination)



FMCS Case

No. 110330-54385-A

Before

Ruth M. Moscovitch,

Arbitrator

APPEARANCES:

For the Union:

Shayne Voyles, Staff Attornrey
Policemen’s Benevolent Labor Committee
435 West Washington Street
Springfield, IL 61701

For the Village of Freeburg, IL :

J. Brian Manion
Weilmuenster & Wigginton, P.C.
3201 West Main Street
Belleville, IL 62226

Award and Opinion

Pursuant to the terms of the collective bargaining agreement between the parties, the undersigned was designated as the arbitrator in this matter. A hearing was held on June 15, 2011 at Freeburg, Illinois. Both parties were afforded full and equal opportunity to offer testimony under oath, to cross-examine witnesses, to present other evidence, and to present legal authority in the form of case law and regulations. A stenographic record of the proceedings was made. Both parties submitted post-hearing briefs on August 12, 2011. Neither side has objected to the fairness of this proceeding.

STATEMENT OF THE ISSUE

Did the Village of Freeburg violate the terms of the collective bargaining agreement by terminating Officer Kent Ahlers on March 11, 2011 without just cause? If so, what shall the remedy be?

RELEVANT CONTRACT PROVISIONS

Article 2 Management Rights

Section §2.01 The Union recognizes that the Employer possesses the sole and exclusive right to operate and direct all of the officers of the Police Department, in all aspects, including, but not limited to, all rights and authority granted by law. The Employer reserves the right to direct, manage and control the affairs of the Employer and its employees, except to the extent that this agreement expressly provides to the contrary and may exercise them without prior consulting the union.

Management rights include, but are not limited to, the right:

* * *

- f. To demote, suspend, discipline, or discharge officers for just cause and to discipline or terminate probationary officers with or without just cause;

* * *

Article 5 Grievance Procedure

§5.04 Authority of the Arbitrator. The arbitrator shall have no right to amend, modify, nullify, ignore, add to nor subtract from the provisions of this Agreement. The arbitrator shall consider and decide only the question of fact as to whether there has been a violation, misinterpretation or misapplication of the specific provisions of this Agreement as submitted to him/her by the parties and shall have no authority to make a decision on any issue not so submitted to him/her. The arbitrator shall have the power to determine the issue raised by the grievance as submitted in writing at Step 1. The arbitrator shall have no authority to make a decision on any issue not so submitted or raised. The arbitrator shall be without power to make decisions contrary to or inconsistent with applicable federal or state law. The arbitrator shall submit his or her decision in writing within thirty (30) days following the close of the hearing or the submission of briefs by the parties, whichever is later, unless the parties agree to a written extension, thereof The decision shall be based solely upon the arbitrator's interpretation of the meaning or application of the specific terms of this Agreement to the facts of the grievance presented, consistent with applicable law. The arbitrator shall have the authority to fashion an award consistent with the

requested remedy. A decision rendered consistent with the terms of this Agreement shall be final and binding.

Article 20 Discipline and Discharge

Discipline in the department shall be progressive and corrective in cases of remediable offense and shall be designed to improve behavior and not merely punish it, depending upon the circumstances of each offense, and shall be in all cases based on just cause. Employer shall provide a copy of the written complaint or statement of the complainant to the Employer.

No inquiry, formal or informal, interrogation or investigation of any employee will be conducted without a written complaint having been filed which sets forth the name and address of the complainant, the factual basis of the complaint and/or wrong doing, and the names and addresses of any witness, if any.

FACTUAL BACKGROUND

The facts relevant to this grievance are not in dispute.

Grievant has worked in law enforcement over twenty years, having starting at the age of 21 as an auxiliary deputy sheriff with St. Clair County, working part-time with the Smithton Police Department for approximately 6 years, then working fulltime as an officer in Okawville for approximately 5 years before hiring on as a police officer with the Village of Freeburg (the Village) in 2001. (Tr. 240) The Village, located in a farming area of Illinois with a population under 5,000, has a ten-person police force. The force consists of eight officers, including a sergeant and the police chief, and two non-ranking staff, a permanent investigator and a clerical employee. (Tr. 36-7) Two officers at a time are assigned to patrol the Village and surrounding area primarily on twelve-hour shifts. (Tr. 38) Each officer drives his own squad car.

According to Chief of Police, Mel Woodruff, Grievant is “very, very social”, more so than other officers, with many friends in and around the Village. (Tr. 76, 79) Grievant himself is a resident in the Village. (Tr. 154) Chief Woodruff

acknowledged that other officers also do a lot of socializing: “every police agency in every community has a difficulty with the guys hanging out too much at the coffee shop.” (Tr. 79)

From 2001 until 2009, Grievant received no reprimands or other forms of discipline for his work performance, and, in fact, was commended by the Midnight shift supervisor of the Belleville Police Department in February of 2004 for “attention to detail and quick action” detaining three individuals who were wanted by the Belleville police department for mob action. (U. Ex. 3) He was also commended by the Chief of the Granite City Police Department in November of 2009 for his participation in ILEAS (Illinois Enforcement Alarm System). (U. Ex. 2) Grievant had been commended, as well, while working for the Okawville Police Department by the Alliance Against Intoxicated Motorists for making the majority of the DUI arrests in that department. (U. Ex. 4) Chief Woodruff commended Grievant for his honesty. (See Er. Ex. 8, memo dated November 30, 2009, p. 1)

Report writing duties. As part of their regular duties, Village police officers are required to prepare various written reports. They must fill out “a daily log sheet of all activities of the shift.” Logs are turned in at the end of each shift, and the chief regularly reviews the logs. (Tr. 39-40; General Order dated February 12, 2001, Er. Ex. 19) Officers are also required to fill out informational reports when something occurs on their shift “that isn’t really a criminal activity, but it should be passed on so that the next person – or if we have another call at that particular residence, that we are aware of what’s going on.” (Tr. 43) Finally, officers file police reports on criminal activity. Freeburg Police Department

General Order 3-1 states: “6. Officers shall not knowingly make a false report, either oral or written.”

The Village introduced into evidence three communiqués that Chief Woodruff and Sergeant Steve Burrow sent to all of the officers regarding report writing and proper patrolling:

1. April 2, 2008 email seeking specificity in log entries (Er. Ex. 3)
2. November 4, 2009 email instructing officers to physically check business doors and not just write something in the activity log; this email also emphasized, “There will be no going to friends houses, unless it is official or on your lunch break” (Er. Ex. 6) The email concludes by informing officers that “Any violations of said above will be wrote up.” (Id.)
3. November 20, 2009 email urging specificity on activity logs in which the chief notes, “I am seeing much improvement so keep your chin up and THANKS!!!” (Er. Ex. 7)

Prior disciplines.

Written reprimand, February 4, 2009. On February 4, 2009 Chief Woodruff issued a written reprimand to Grievant for disregarding the chief’s instructions regarding proper procedures to obtain an oil change for a squad car. The previous day, February 3, 2009, at 3:00 p.m., the Chief gave Grievant a directive to utilize another squad car while the oil was being changed in his usual car so that he would remain available for duty calls. Nevertheless, on February 4, 2009 the chief learned that Grievant pulled himself out of service and waited for

the oil change to be completed (approximately 30 minutes) during which time Grievant was called, but failed to respond, to a dispatch call.

Chief Woodruff advised Grievant that “given the simplistic nature of the directive I gave you and your willingness to disregard my instructions out of obvious convenience to yourself constitutes insubordination...” (Er. Ex. 4) Chief Woodruff further warned Grievant, “Further incidents of the nature will result in further disciplinary action and up to termination.” (Id.)¹

Written reprimand, three-day suspension for sleeping on the job, October 7, 2009. On October 7, 2009, Grievant parked his squad car in a secluded spot next to a cornfield and fell asleep. Sergeant Burrows found him there, but instead of waking him up and requiring him to return to active duty, as a prank, Burrows covered the squad car with beanstalks. This incident was talked about all over town and eventually it reached the ears of Chief Woodruff. (Tr. 65) Chief Woodruff issued a written reprimand to Grievant on November 30, 2009 (Er. Ex. 8) and disciplined Sergeant Burrows for leaving Grievant, who suffered from sleep apnea, and for failing to report the incident. (Tr. 63-4, 68) The Chief also took the matter to the Village police committee, which ordered that, in addition to the written reprimand, Grievant be suspended for three days without pay. (Tr. 69)

¹ The Village also introduced an undated and unsigned memorandum, which Chief Woodruff testified was directed to Grievant and given to him at the same time as Er. Ex. 4, the reprimand for the oil change. The memorandum raised three issues: (1) failure to make a report on damage to property; (2) failure to record on his activity log a customer’s failure to pay for gas; and (3) an instance when Grievant was in the P.D. with his radio off channel and so failed to respond when a fellow officer looked for him. (Er. Ex. 5, Tr. at 171-2) Because there is no date on this document and no date for any of the three incidents detailed, I disregard this as evidence of prior discipline.

In the written reprimand, Chief Woodruff reviewed 14 issues with Grievant's performance, including:

1. Not providing assistance to fellow officers.
2. Failure to answer your radio or maintain communication during your shift.
3. Spending too much time at your residence.
4. Lengthy lunch breaks.
5. Frequenting residences of your friends for extreme amounts of time.
6. Frequenting businesses for extreme amounts of time.

12. Actions that create an environment unsafe for you and fellow officers.
13. Routinely disappearing during your shifts.
14. Sleeping during your shift.

The chief then gave ten directives to Grievant regarding his performance. Of particular relevance to the charges at issue here is the following:

- You will not be allowed at any private residents [sic] or local establishments except on official business which will require an activity log entry and notification to your co-workers and or CENCOM of that activity. Exceptions will be for fuel or stops for food or drink, these exceptions require efficient use of time, (get in and get out), they also must be listed on your activity log and you must notify the other units on duty as well as having them indicate it on their log also.

(Er. Ex. 8, page 3) The Chief also changed Grievant's work hours.

On March 3, 2010, Chief Woodruff commended Grievant in an email with the subject of "Work performance status:" "Given the improvement in your work performance over the past few months I feel you are making headway on the issues we discussed in your last reprimand. I am happy for you...." The chief moved Grievant back to his regular shift, and urged him to "revisit the ten written directives outlined in that reprimand to refresh you [sic] memory on specifically what I have required of you and ensure that you continue to comply with those directives and keep up the good work." (Er. Ex. 9)

Note to file, May 5, 2010. On Tuesday, May 5, 2010, Chief Woodruff sent an email to Grievant. The subject of the email is “Communications.” The chief informed Grievant that his partner, Officer David Unverferth, had attempted to contact Grievant by telephone when he required assistance for a call in Fayetteville, but had been unable to reach Grievant. Chief Woodruff told Grievant, “these types of issues have been a source of previous disciplinary actions for you and I again wish to make it clear that you are responsible to maintain communications during your shift and that the negative trends of your past work performance will not be ignored.” (Er. Ex. 10)

The Marissa incident, September 29, 2010.

On Wednesday, September 29, 2010, Grievant was patrolling the night shift along with Officer Unverferth. At approximately 1:00 in the morning, Grievant was patrolling the south end of the Village when he saw a man sitting by the side of the road. The man got up and started walking. Grievant noticed that the man was intoxicated and was carrying a box of beer. The box had been ripped open and there were a few cans missing, but he did not have any open liquor containers. The man explained that his ride had left, stranding him in the Village, that he couldn't get his wife to wake up, and that he didn't have anyone else to call to get a ride home. Grievant decided to give the man a “courtesy ride” to his home in the nearby town of Marissa, Illinois, some 17 miles or 25 minutes away from Freeburg. (Er. Ex. 15) Grievant called in at approximately 1:17 a.m. to report that he was taking the man to Marissa. As soon as he saw the man safely into his house, Grievant got back in his car and radioed in “10-8” to indicate that the incident was over and he would be returning to the Village. (Tr. 244-45)

According to both Grievant and Chief Woodruff, 10-8 means “clear of the assignment, en route back to venue, which means Freeburg.” (Tr. 128, 246) Grievant noted on his activity log that from 1:17 to 1:48 a.m. he was involved in the following activity: “curtesy [sic] to 10-SS Stranded Pedestrian to Marissa, Scott Beard.” (Er. Ex. 14)

After delivered the man to his home, Grievant did not immediately return to Freeburg. Instead, he went to visit Marissa police officer Jake Hoffman who had heard on the radio that Grievant was in Marissa and asked him to stop by. Hoffman was 21 years old, had just been hired full-time by Marissa, was proud of having just bought his first home, and had been “hounding” Grievant “for a long time to come see his house.” (Tr. 246) Grievant thought, “Well, we’ve been quiet all evening. I really don’t see a problem with it” and agreed to swing by. (Id.) While at the home of Officer Hoffman, Grievant testified he stayed in radio contact by keeping his portable radio on his hip available for any calls, although none came in. (Tr. 253-4)

Another officer also stopped by and the three officers talked for some time. Eventually, Grievant realized that it was getting late, and that he “needed to get back because Dave [Unverferth] was getting ready to get off duty,” so he left and started to drive back to the Village. By now it was approximately 3:00 a.m. Grievant called Officer Unverferth to tell him that he had stopped to talk to Officer Hoffman, had “lost track of time,” and “that he would probably meet me on the way back, on my way home, which it would be towards New Athens, is where I reside.” (Tr. 231) Telephone records confirm a nine-minute phone call from Grievant to Unverferth. (Er. Ex. 16, 17) While they were talking on the

phone, the two men saw one another as their vehicles passed, Unverferth on his way home, and Grievant on the way back to the Village. (Tr. 236, 274)

When he returned to the Village, Grievant says he was in a hurry to get home. His shift ended at 4:00 a.m. (Tr. 255) Grievant recalls that he hurriedly drove through the school area and at some point that night drove through the mall and checked it. (Tr. 255-56) Grievant then filled out his log as follows:

0148	0210	Patrol
0210	0225	Door √s Mall
0225	0235	Patrol
0235	0250	Patrol schools & area
0250	0255	Patrol
0255	0305	Patrol reckpark [sic]
0305	0400	Patrol
–	0400	10-42

(Er. Ex. 14)

Grievant acknowledged that the information he entered in his log that night was not correct:

“The times are not correct. I will – I do know that I drove through the schools, and usually – and I’m not going to say I did that night – but I usually have kind of a routine. The last thing I do is go through the Freeburg recreation park. Since it’s this close, I’ll drive through there, make sure there’s no kids or anybody parked there, and then I come up to the PD to finish my paperwork, turn in all of our equipment so I’m ready to go home and be relieved of my shift.”

(Tr. 256) Grievant testified that he did perform the checks “after coming back from Marissa”, but not at the times recorded and “very hurriedly so I could go home.” (Id.) Grievant entered the date on his log as “9-29-30” instead of 9-29-10. (Er. Ex. 14)

Chief Woodruff reviewed Grievant’s log entries for 9-29-10, “probably the day after” he received it, without seeing any problem with the entries. (Tr. 199-200)

How Chief Woodruff learned of the Marissa incident.

Starting in the summer and into the fall of 2010 Officer David Unverferth spoke with his supervisor, Sergeant Burrows, about concerns that Grievant’s behavior on the job was jeopardizing Unverferth’s personal safety. (Tr. 227) Officer Unverferth had been paired with Grievant 98% of the time starting in March of 2010. (Tr. 229) Burrows urged him to speak to Chief Woodruff about his concerns, and Unverferth did so on November 24, 2010. Chief Woodruff encouraged the officer to put his concerns into writing, and on December 6, 2010 Officer Unverferth gave his chief a letter he wrote with the help of Sergeant Burrows. (Er. Ex. 11) As he explained in the letter, Officer Unverferth was uncomfortable submitting a written complaint about his fellow officer and friend, but felt he needed to do that:

I am Officer Ahlers’ friend and mean no ill harm to him. I have had conversations with him about what appears, in my opinion, to be his lack of motivation in hopes of re-energizing him. Personally, I feel that his actions are putting my safety at risk and it is being compromised. I am responsible for my family who depend on me to come home every night. I have mixed feelings and it was not and still remains a difficult decision that I have put off for a period of time, however, I feel I cannot let it continue. I find it unsatisfactory to be put in a situation that compromises safety by a fellow officer.

(Id.) In his letter, Officer Unverferth identified 5 issues of concern:

- Insufficient backup when approaching a stopped vehicle.
- The Marissa incident – leaving the village for an extended time without notice to him, leaving him to believe he had backup when he didn't.
- Servicing his squad car while on duty, rendering him unavailable to respond when called upon.
- Not reporting incidents, leaving his fellow officers in the dark about potentially dangerous situations.
- Answering radio calls, but failing to respond.

Officer Unverferth requested that a different partner be assigned to patrol with him. (Id.)

When Chief Woodruff received the letter, he informed the Village administrator, undertook an investigation of Officer Unverferth's complaints, and changed the two men's schedules so that they were no longer working together.

(Tr. 98-9, 103, Er. Ex. 12, 29) The chief testified that when he learned about Grievant going to Officer Hoffman's house in Marissa, he was troubled not by the fact of his going, but the "considerable amount of time there when he should have been here doing his duties." (Tr. 173-4) As part of his investigation, Chief Woodruff reviewed the logs of both Grievant and Officer Unverferth for September 29, 2010. (Er. Ex. 13, 14) Subsequently he got CENTCOM (Central Command dispatch) to burn an audio CD of calls on the night of September 29, 2010 that confirmed the official calls Grievant made that night about the transport of the intoxicated man to Marissa. (Tr. 128-9) The chief also spoke to officers from Marissa. (Tr. 130)

Disciplinary action that is the subject of this grievance.

On January 5, 2011, Chief Woodruff served Grievant, through his designated representative, with notice of a pre-disciplinary hearing on January

12, 2011 to consider whether Grievant should be disciplined or his employment terminated. The notice specifies two charges of misconduct on September 29, 2010: (1) Being absent from his assigned post by failing to return to the Village until 3:15 a.m. after clearing the delivery of the intoxicated man to his home in Marissa at 1:48 a.m.; (2) Falsifying his daily log of activities by indicating various activities in the Village between 1:48 and 4:00 a.m. when he was, in fact, in the home of a friend in Marissa, Illinois. (Er. Ex. 21) After the January 12th hearing, Grievant was placed on paid administrative leave pending action by the Village Board. (Er. Ex. 23)

On March 7, 2011 the Village Board voted to terminate Grievant's employment based upon the charges of misconduct presented at the pre-disciplinary hearing "as well as your prior disciplinary history." (Er. Ex. 27) Chief Woodruff did not specifically recommend termination to the Village Board, but told the Board "whatever they decided would be fine with me." (Tr. 157) He testified that he had concerns about Grievant's trustworthiness and honesty and could no longer trust Grievant when he wasn't under direct supervision. (Tr. 152) During the eleven years that Mel Woodruff has been the Chief of Police in the Village, he has never issued a suspension or termination of any other employee. (Tr. 198)

POSITIONS OF THE PARTIES

Employer argues it had just cause for terminating Grievant because (1) Grievant demonstrated a reckless disregard for the safety and welfare of the department, his fellow officers and the community by repeatedly ignoring his responsibilities, not advising his partner where he was, spending excessive time

socializing rather than on patrol, and on September 29, 2010 remaining outside his assigned territory while his partner and CENTCOM believed him to be back in the Village; (2) the Village administered progressive and corrective discipline over the period of a year and a half, starting with a written reprimand for disobeying a direct order regarding proper procedure for an oil change, thereby absenting himself from his assigned duties, progressing through a three day suspension for sleeping on the job, coupled with a detailed warning about report writing, socializing and failing to support his fellow officers; culminating in this discharge; (3) dereliction of duty, falsification of an activity log and sleeping on the job are all dischargeable offenses; (4) the Village's decision to terminate the Grievant was reasonable given the egregiousness of his conduct on September 29, 2010, the fact that this misconduct involves a lack of integrity, trustworthiness and honesty, and the fact that past attempts to remediate Grievant through progressive discipline have failed; (5) this was the third strike in terms of discipline for Grievant; the Village reasonably concluded that after three strikes, Grievant was out. For these reasons, the Village asks that the grievance be denied.

Union, on the other hand, argues that by terminating Grievant the Village violated the language and spirit of the collective bargaining agreement, particularly Article 20, in that (1) Article 20 requires discipline to be progressive and corrective in cases of remediable offense; Grievant's misconduct was clearly remediable, and he should have been given discipline less than discharge so that he could remediate his behavior; (2) The previous discipline administered to grievant was for staying with his car for an oil change and sleeping on the job –

neither of these offenses was ever repeated, demonstrating that Grievant is capable of remediation; in fact the Chief commended Grievant for improving his performance after his suspension; further there is nothing in the collective bargaining agreement that condones a “three strikes and you’re out” approach to discipline; (3) Grievant had a legitimate reason for leaving the Village on the night of September 29, 2010; he kept his phone on his person to receive any calls that might have come in, but none did; the town was quiet and Grievant’s presence was not required for any particular activity that night; this was a time management issue, something Chief Woodruff has characterized as a minor work-related issue, and no actual harm resulted from Grievant’s conduct that night; (4) the Village is a small town and the Police Department has a history of being lax and uneven in its supervision of its officers; the Chief often let acts of misconduct or irregularity with respect to reports go by without warnings; Grievant is the first officer to be discharged and his penalty is out of proportion to his offense and inconsistent with penalties meted out to others in the Department; (5) Grievant’s mistakes on his activity log that night were the result of careless haste as he was in a hurry to go home; there is no evidence of deliberate or knowing falsification; further, activity logs are not actually “police reports” and therefore are unlikely to be subpoenaed in any criminal proceeding; accordingly errors in preparing such documents are a relatively minor infraction; (6) Grievant has served the Department well for almost ten years, receiving commendations for his work; his past performance mitigates against the extreme penalty of termination. Accordingly, while there is just cause for some form of

discipline, there is no just cause for termination on these facts; Grievant should be reinstated.

DISCUSSION

Upon careful consideration of the evidence presented, as well as the thoughtful arguments and briefs presented to me, I must deny this grievance. I do so for the following reasons.

Unreliability and untruthfulness are critical failings in someone charged with public safety. Police officers must be ready at any time to respond to a call for their services, and each officer must be able to rely on his colleagues for backup so that potentially dangerous situations are handled appropriately. Further, officers must be honest and accurate in all their reports. During the night of September 29, 2010, Grievant abrogated his professional responsibilities as a police officer on both scores.

First, he failed to inform either CENTCOM or his partner, of his whereabouts for well over one hour, allowing everyone to believe that he was somewhere nearby in the Village on patrol. Had a call come through, Grievant would not have been in a position to respond promptly. Even more seriously, Officer Unverferth would have believed that his backup was just minutes away, when, in fact, Grievant was several towns away. Officer Unverferth could have been in jeopardy had he responded alone to a situation that called for backup. Of course, nothing bad happened that night, and that is certainly fortunate. But luck is not a mitigating factor when an officer knowingly violates basic rules and protocols and places his colleague and his community at risk.

Second, Grievant lied about his actions that night and falsely completed his daily log, pretending to have carried out various specific tasks at various specific times when he was, in fact, socializing with a friend out of the district. For a police officer to file a false report – even an informal log – is a very serious matter. Grievant admits that his log was “inaccurate” that day, but states all of the reported activities either were performed at some time that evening or were activities that he usually performed as part of his “routine.” He testified that the reason he put down times that were “not correct” was he was in a rush to get home. However, I do not accept that he was just careless when making entries in his log the night of September 29, 2010: his log is very detailed, listing seven precise activities at precise times when he knew perfectly well he was in Marissa at his friend’s house and not patrolling the Village. The log entries were a deliberate fabrication designed to hide his real whereabouts and activities from his chief. There is no other explanation for those detailed entries.

Grievant also urges me to treat this matter as a less serious offence because the log is neither a sworn statement nor a formal police report, unlikely ever to be introduced as evidence in a criminal prosecution. However, it is a record that every officer is mandated to maintain, and therefore an official document. It is unacceptable for a police officer to deliberately fabricate events and mislead his chief in any manner, whether formally or informally, whether orally, in a police report, or in some other document.

To his credit, Grievant does not try to excuse his conduct: he agrees that he should not have stayed so long at his friend’s house in Marissa and acknowledges that his reporting was inaccurate. He does argue for leniency,

however, on the grounds that his misconduct was not so serious as to merit termination. Grievant argues that his behavior falls within the definition of a remediable offense that, under Article 20, warrants discipline that is “progressive and corrective” and is “designed to improve behavior and not merely punish it.” I cannot agree.

This was not trivial misconduct. Absenting oneself from duty, which is what Grievant was doing by visiting his friend for over one hour in a town outside the District, is serious misconduct for a police officer whose job is to patrol and protect the community that has hired him. Although Grievant was wearing his police radio and feels he was therefore available should a call come through, he was not physically where he was supposed to be or where his colleague and CENTCOM believed him to be. Had a call come through, he was 25 minutes away, rather than right in or around the Village. He was not performing his patrol duties, and he was not available to answer a call or to back up his partner.

But in any event, the Village did administer progressive and corrective discipline to Grievant. At the time of his trip to Marissa, he had already received a written reprimand and a three-day suspension, both for incidents where he absented himself from his assigned duties. Further, with the suspension he received a memorandum that detailed several problems with his job performance including:

- Not providing assistance to fellow officers.
- Failure to answer your radio or maintain communication during your shift.
- Frequenting residences of your friends for extreme amounts of time.
- Actions that create an environment unsafe for you and fellow officers.
- Routinely disappearing during your shifts.

He was also given the following specific directive, which he violated on September 29th:

- You will not be allowed at any private residents [sic] or local establishments except on official business which will require an activity log entry and notification to your co-workers and or CENCOM of that activity. Exceptions will be for fuel or stops for food or drink, these exceptions require efficient use of time, (get in and get out), they also must be listed on your activity log and you must notify the other units on duty as well as having them indicate it on their log also.

(Er. Ex. 8, Emphasis Added.) On March 3, 2010 Grievant's Chief praised him for having improved his performance, but reminded him to review the November 30th memorandum and "comply with those directives." (Er. Ex. 9)

Grievant was thereby given very specific warning about not disappearing during his shift; not socializing for extended periods of time; keeping his colleagues and CENCOM apprised of his whereabouts; and reporting his activities accurately in his daily log. The Village did, in other words, administer progressive and corrective discipline: it explained to Grievant what was expected of him; it tried to correct his behavior by being very specific and prescriptive about what he should and should not do during his shift; and it praised him when he appeared to be improving. Yet Grievant did not take these warnings seriously. When asked why he went to visit a friend in Marissa after completing the police business that had, legitimately, taken him there, he testified, "Well, we've been quiet all evening. I really don't see a problem with it." (Tr. 253-4) That answer reflects a lack of understanding of the job of a police officer, which is to be on patrol, ready to respond. It also shows that despite the efforts of the Chief, Grievant was not remediable. When a friend asked him to stop by, he did not

recall that he had been ordered not to visit friends during duty hours, but went right over. Further, he stayed and chatted for over an hour, without thinking that he was doing anything wrong.

While the Department may have been more forgiving of misconduct by Grievant or others in the past, it was entitled, on these facts, to decide that termination was the appropriate penalty now. This Grievant persisted in serious misconduct, even though he had been warned and disciplined about the same performance issues. By choosing to make light of his professional responsibilities and disobey explicit directives from his Chief regarding socializing on duty, keeping his colleagues and CENTCOM apprised of his whereabouts, being available to respond to calls, and keeping accurate logs of his activities, Grievant has forfeited consideration for leniency.

AWARD

For all of the foregoing reasons, the grievance is denied.



Ruth Moscovitch, Arbitrator

Dated: September 12, 2011