

**FREDERICK P. KESSLER
ARBITRATOR**

Fish and Wildlife Officers Guild

And

**Brendan Vance Termination
FMCS Case # 180809-0745**

Washington Department of Fish and Wildlife

A, INTRODUCTION

On Wednesday October 10, 2018, this Arbitrator was advised that he had been selected to hear the dispute between the Washington Fish and Wildlife Officers Guild (hereinafter referred to as “the Guild”) and the Washington Department of Fish and Wildlife (hereinafter referred to as “the Department”). On December 11, 2018, a three-day hearing was scheduled in Olympia on March 13 through March 15, 2019.

Hearings were held on March 13, March 14, March 15, April 17, April 18, June 27, June 28, and June 29, 2019. Witnesses testified and documents were received in evidence. Brief were to be mailed by August 30, 2019. The final Brief was received on September 7, 2019.

B. APPEARENCES

The Union appeared by Attorneys Drew Carson, James M. Cline and Clive Pontusson or Cline & Associates. They were assisted by Dave Jones, the President of the Guild.

The Department appeared by Assistant Attorney General Thomas Knoll. He was assisted by Amy Estes, Human Resource Specialist, Chief Steve Bear, of the Division of Enforcement in the Department, and Scott Lyders, from the Labor Relations of the Office of Management for the State of Washington.

C. CONTRACT PROVISIONS AND DEPARTMENT RULES

The Collective Bargaining Agreement (CBA) between the State of Washington and the Coalition of Unions (including the Fish and Wildlife Officer Guild) for the period July 1, 2017 through June 30, 2019 provides as follows:

CBA

Article 30 Discipline

30.1 Just Cause The Employer will not discipline any permanent employee without just cause.

30.7 Pre-Disciplinary Meeting Prior to imposing discipline, except oral or written reprimand, the Employer will offer the opportunity to schedule a pre-disciplinary meeting, the employee will inform the employee and the Union of the reasons for the contemplated discipline and an explanation of the evidence and copies of written documents relied upon take the action.

Article 31

Step 4. Mediation or Pre-Arbitration Review ...If the matter is not resolved in this pre-arbitration review, within fifteen (15) days of the meeting, the Union may file a demand to arbitrate the dispute with the American Arbitration Association (AAA). Federal Mediation and Conciliation Service (FMCS) or through mutually agreed upon list of arbitrators.

Step 5 Arbitration: Demand to Arbitrate. If the grievance is not resolved at Step 4, the Union may file a request for arbitration. The demand to arbitrate the dispute must be filled with appropriate organization with fifteen (15) days of the Mediation session or PARM.

The Department promulgated a series of Rules and Regulations relating to its **Enforcement Program**:

Rules and Regulations

Regulation 1.10 Organization, Chain of Command, Lawful Orders, and Command Protocol

4. Lawful Orders:

A. Employees shall promptly obey all lawful orders, including, relayed orders issued by a supervisor or acting supervisor or a Commanding Officer. Relayed orders shall be in writing when practical.

Regulation 2.00 Rules of Conduct

2. A As an employee of the Department of Fish and Wildlife, Enforcement Program.... Employees must be fully aware of the ethical responsibilities of their position and must strive constantly to live up to the highest possible standards. An employee acts as an official representative of the Washington State government and is required and trusted to work within the law.

2. D An employee will not engage in acts of corruption or bribery. The public demands integrity in state employees. Employees must therefore avoid any conduct that might compromise integrity and thus undercut the public confidence in the Department Fish and Wildlife.

20 Truthfulness: Employees shall truthfully answer all questions specifically directed and narrowly related to the scope of employment and operations of the Department.

Regulation 5.03 Radio Communication Procedures

2. Enforcement officers are required to maintain regular communication with their primary communication center to ensure their safety, provide for a rapid deployment of field forces, and to provide for effective supervision.

3 A. Patrol officers and sergeants shall sign in and out of service by telephone or radio with Dispatch immediately upon the beginning or ending of any work period.

6 A. Officers and sergeants shall sign in and out of service with Dispatch by phone or radio, even when working at home or at an office.

6 B. Officers in the field shall regularly inform Dispatch of their general situation and location so that assistance can be provided in an emergency.

**Regulation 9.25 Officer's Notebooks
POLICY**

1. **General** Officer notebooks are the property of the Department. FWO's and Sergeants shall maintain and use Officer notebooks to record daily activities.....All daily entries shall be completed before the end of that day's work period. Officers shall not knowingly enter or cause to be entered any inaccurate, false, or misleading information.

2 **Required Entries:** Each duty day will begin on a new page. Entries will be made in chronological sequence. Officers in the field shall make a minimum of one entry each hour.

Regulation 9.80 Records Management System

General: This regulation details the requirement for program personnel as it relates to the timely and accurate entry of data into the CODY records management system. CODY will be used to record, track, and share a subset of activity data on enforcement actions, regulatory check, criminal history, and time accounting. Program personnel are responsible for timely and accurate data entry into the system.

6. Officers Will Normally Complete All Officer Log Entries by the End of Their Duty Day.

7. Officers Will Record Activity Time Accounting as Log Entries.

8. Officers Will Code Activity Time Accurately.

10. Officers will Update Unit Status.

a. Officers will update their unit status in CODY when they go in service.

b. Officers will update their unit status in CODY when their status, activity and/or locations changes during a duty day.

D. STATEMENT OF FACTS

Brendan Vance started his career as an Enforcement Officer at the Department on January 9, 2006. He had completed two bachelor’s degrees, one in wildlife biology and one in animal science. Working for the Department was his “dream job.” He was assigned to Columbia County, a county in southeastern Washington; he lived in Dayton, the county seat.

The job as a Fish and Wildlife Enforcement Officer was a “dream job.” Vance was the only enforcement officer in the county. His duties were patrolling wildlife areas to make sure that game regulations were enforced. Officers had arrest power and were required to assist state and local law enforcement if called upon. Vance also worked part-time for the neighboring Garfield County Sheriff’s office. He was recognized for saving a life.

The officers had the freedom to set their own schedules, but were required to log in to work for 171 hours per 28-day period. They worked alone and unsupervised. The officer was given a patrol truck and at the beginning of the day was required to sign in with Washington State Patrol dispatch through his truck radio. If that was not possible, an officer was should use his cell phone. An officer was also required to login with the CODY Record Management System at the start of his service, and to update CODY throughout the day. Officers were also to sign-out of CODY at the end of their day.

Vance, his girlfriend and another couple took a vacation to Lincoln City, Oregon on July 5th and 6th. On July 8, 2017, Sergeant Mossman, his immediate supervisor received an inquiry about a residency violation in the Dayton area. He forwarded the inquiry to Vance on CODY. When Vance failed to respond, Mossman found that Vance was scheduled to work that day, and Vance had responded to a calf being killed by a Cougar and had called a houndsman to hunt the cougar at 8:50 a.m. Mossman assumed that Vance was working that day.

The permit for the houndsman was not issue until July 10, 2017. When Vance's total time was reported, he claimed he worked nine hours on July 7th. Additional log entries for "1000 Touchet" and "1400 Tus Cannon" were added. Vance's CODY records had no entries. When his cell phone records were examined, the 8:20 and 8:50 calls were made from Lincoln City, Oregon, not from Dayton, as represented by Vance. The mileage records from his patrol truck were also inconsistent with his reported claims.

Sergeant Mossman checked Vance's work records and compared them with Vance's CODY logs, the logs showed seventeen days had inconsistencies that did not correspond with his mileage and time claims for working. Subsequent investigations showed that Vance double-billed the Garfield County Sheriff and the Department for time worked at both jobs. On one of the days he worked in Garfield County, he claimed sick leave at his regular job at the Department. He acknowledged that he did file a claim for sick leave, but said he intended to file for annual leave and had made an error.

On October 21, 2017, an investigatory interview was held in Spokane before Sergeant Mossman, Captain Rahn and Captain Anderson. Also attending was Detective Hahn, the Guild's representative. Vance responded to discrepancies by saying that "he may have made a mistake," "I am not 100% sure," or "I am guessing." He also alleged that his radio was not always working, Vance insisted that he was working in Columbia County on July 7th, the day of the calf depredation incident and could not explain calls on his work cell phone from Lincoln City, Oregon. He also indicated that since his divorce, and custody dispute with his former wife, he began to "self-medicate" with alcohol.

On November 22, 2017 a pre-disciplinary hearing was held. Vance did not provide any additional evidence to explain the July 7th irregularities. Chief Bear terminated him based on dishonesty regarding total time billings and for other violations. Subsequently Chief Bear found out the Oregon State Police issued a warning to Mr. Vance's girlfriend, (who accompanied him to Lincoln City) at 4:18, at mile marker 191, on US Highway 730. It would have taken them one hour sixteen minutes to get to Dayton, his home where his truck was located, from that point. Vance could not have worked even six hours on that day.

E. POSITION OF THE GUILD

The Request for Arbitration was Timely.

The Collective Bargaining Agreement allows the Guild to serve a demand to arbitrate on the employer. On March 30, 2018, a pre-arbitration review meeting was held. On April 8th the Union asked Scott Lyders for the due date for a Demand for Arbitration. He told the Union it was April 24th. Ten days later a Demand for Arbitration was filed with Scott Lyders, at Management Labor Relations. Lyders acknowledged that the Demand for Arbitration was filed in a timely manner and suggested that any further correspondence be sent to him

The Collective Bargaining Agreement covers many different state agencies. The language in the CBA required that the demand be filed with “the appropriate organization.” That could be interpreted as the department where the employees worked. Because the language was ambiguous, it did not specify the organization was to provide the list of arbitrators.

The Demand for Arbitration did not specify either FMCS or AAA. It sought only arbitration. The failure to specify which agency was to provide a list is was not fatal to the demand. There is a strong presumption that favors a hearing on the merits of the grievance. The Guild gave notice of its demand. It was not essential to include the agency which was to provide the list in order to trigger the arbitration. The source for arbitrators could be agreed upon at a subsequent date.

The Arbitration should be limited to the dates cited in the Pre-disciplinary and the Termination Letters.

Officer Vance had effective notice of only three dates on which the Department relied for the discipline; these were January 26, June 26, and July 17, 2019. Allowing any testimony which expands to charge after the investigation by the Department, deprives Vance of his due process rights.

The Department has the Burden to Prove that Officer Vance was terminated for Just Cause.

The Department failed to prove all just cause requirements. The Union cites Arbitrator Daugherty's seven tests in Enterprise Wire and Enterprise Wire Independent Union 46 LA 359. The Union argues just cause must be proved by "clear and convincing" evidence; a mere "preponderance of the evidence" is insufficient. The Washington State Supreme Court has ruled that a preponderance is not sufficient for discipline in medical licensing actions. The employee must knowingly provide false information, with the intent to deceive, the employer. A mere inaccuracy in information provided by an employee is not sufficient to justify his/her termination.

If the Employer failed to provide procedural due process the discipline must not be imposed. Failed to prove notice of the possible consequences of particular misconduct is required to sustain a discipline, as cited in Enterprise Wire.

Department failed to prove the discipline was proportionate. Although Chief Bear was new to his position, he relied solely on the Human Resources Department. He did not examine the files of his own Department before reaching his disciplinary conclusion. Officer Loc Do had record keeping inconsistencies, but was not found to be "untruthful." Officer Gaston was found to have lied and merely received a two-week suspension. The facts in those two cases show that prior untruthful conduct does not necessarily result in termination.

The Department failed to prove that Vance actually violated the rules alleged. His conduct was not deliberate, but result of negligent record keeping. Rules must be specific. Chief Bear defined integrity as "doing the right thing even if you know no one else is going to know about it." That statement is not focused on mandating specific conduct, but reflects it is aspirational goals not capable of consistent enforcement.

Officer Vance did not violate Regulation 200, dealing with bribery or corruption, and nor did he ever accept gifts or gratuities. Regulation 9.25 prohibits entering false or misleading information in his log book. The Department determined that Vance had lied because he entered inaccurate, hence false, information. He did not enter false information knowingly, but rather did so mistakenly.

The Department did not conduct a thorough and fair investigation. Captain Anderson reached conclusions that were unfair and did not let Vance explain his answer at the pre-termination meeting. The Department also failed to investigate Vance's problems with alcoholism.

The Department failed to prove that that termination was reasonable in light of his work history. The Department did not apply progressive discipline. The penalty should fit the offense and be aimed at correcting the conduct, not punishing it. The employee should not "jump" from discipline employee receiving a warning, to next facing a discharge.

There was not clear and convincing proof that he violated the rules of the Department. Significant factors weigh against Vance's discharge. His employment record was not considered in the decision to terminate him. During the eleven years he was employed, he had not received any discipline, rather he had been promoted and received commendations. His record keeping errors call for a corrective punishment, not for termination. The Department failed to provide progressive discipline and failed to prove, by clear and convincing evidence of that Vance committed an intentional violation amounting to just cause.

Vance's log books were not regularly reviewed by his commanding officer. Sergeant Mossman was negligent in reviewing Vance's records. Although they were not regularly kept up to date by Vance, he was commended for keeping his records in good order during a performance evaluation. The Department bears some degree of fault for the inaccurate records. Just cause required the Department free of fault for the inadequate records alleged.

The Arbitrator should issue a remedy that includes reinstatement, back pay, and other remedies. The Arbitrator should make the grievant whole, including back pay, and fringe benefits. The arbitrator should not take into consideration any employment that Vance had in the interim. Vance also lost his job as a Reserve Deputy for Garfield County when he was charged by the Department. He should be compensated for his loss of income from Garfield County. The award should include a 12% pre-judgment interest to adequately compensate him for his loss.

D. POSITION OF THE DEPARTMENT

The Burden of Proof is on the Department. For “just cause” to be sustained, the Department must show that it followed the appropriate procedures, proved the charges against the employee, the penalty is reasonably related to seriousness of the proven charge, considering the employees disciplinary record, and any mitigating factors were considered. The Department must prove the offense in which an employee is charged and that the penalty was appropriate. The burden then shifts to the Union to show that the investigation was improper.

Some Arbitrators have found in similar cases that the clear and convincing evidence is the appropriate standard for termination cases. Other cases offer the criminal standard, beyond a reasonable doubt. The burden that the Department is proposing is the preponderance of the evidence, is the lowest burden of proof.

Because the Union failed to follow the CBA terms, Vance is not subject to Arbitration. The Union failed to preserve the grievance by not following the timelines set out in Article 31. Failure to adhere to the timelines is an automatic dismissal of the grievance. The Union and the Department did not settle the dispute at Step 4. The four-month delay in requesting an organization to send a list of arbitrators in a timeline contrary to the terms of CBA. The Union argues that it enclosed a demand for arbitration, but they failed to file it timely as required by the contract.

The Department’s pre-disciplinary letter provided Vance with adequate notice to the charges. The Arbitrator should allow evidence of other dates beyond January 25, 2017, June 26, 2017 and July 7, 2018. These dates are relevant evidence that he lied on July 7, 2018 and double billed on January 26 and June 26, 2017.

Vance violated enforcement regulations, fabricated hours of work, and overlapped/double billed work hours at his employment with the Garfield Sheriff’s Department.

Enforcement Violation: Vance recognized that he needed to change his work habits and correct his reporting and documentation. He failed to sign in and out of service regularly. This evidence placed him and other officers in danger. He falsified work reports by guessing what he had done in his daily logs. All of which diminished his integrity.

Overlapping/double billing of work hours. Vance submitted duplicate work hours to the Department and to the Garfield County Sheriff on January 5, January 25 and June 26, 2017. He explained that he did not mean to bill hours for both agencies. He did not attempt to correct the over-billing or return the money to either agency. He billed the Department for sick leave on January 26th, although he worked for the Sheriff on that day and was not sick.

Fabrication of Work Hours. Few acts of misconduct are more serious for a law enforcement officer than that of lying. Integrity is a job requirement. Vance fabricated his work hours as previously discussed above. He lied throughout the disciplinary process.

The most telling of the incidents occurred on July 7, 2017. Vance did not work the nine hours he claimed. He claimed he started to work at 7:00 am. He later claimed he started at 6:00 pm. His mileage records did not support his claim. He was out of the state in the morning and by the time he got to his home in Dayton, there were not nine hours left in the day. Vance claimed it was sloppy record keeping due to the “fog of alcohol.”

The Facts in this case do not justify reduction in Vance’s discipline. For the past five years his Sergeant has given him positive performance reviews. However, he was not perfect. He received verbal counseling for his need to more accurately account for work and leave time. Vance fabricated 17 days of data used for the evaluation. That makes the data inherently unreliable. The Arbitrator should not place any significant weight on the performance reviews as they were infected by the fabricated information on which they were based.

The Union failed to show the discipline was inconsistent with prior disciplines. The underlying facts in the Loc Do and Zach Gaston incidents were substantially different. The Loc Do case was not about discipline. This case was about behavior concerns, not fraudulent record keeping. Zach Gaston was not forthcoming in an interview conducted by the Washington State Police. Gaston eventually took responsibility for his conduct. Vance did not, instead he continued to hold fast to his lies. The only case similar to Vance’s involved Robert Loffler, who repeatedly lied to his Sergeant and who falsified his work records. In Loffler’s case, the Arbitrator affirmed the termination.

Vance's prior good conduct record does not excuse his failure to account for his time or his other policy violations. A good deed does not offset his lies about his hours worked and failing to follow the regulations of the Department. He did receive an award for his saving the life of an infant. He deserved that recognition. However, it does not offset the recent seriously bad conduct.

E. QUESTIONS IN DISPUTE

Was the Union's Demand for Arbitration timely filed under the terms of the Collective Bargaining Agreement?

Did the Department have just cause for terminating Brendan Vance? If nor, what is the remedy?

F. DECISION

The arbitrability issue.

The CBA required the Union to serve a demand for arbitration which included either a selected agency (AAA, FMCS to send a list of possible arbitrators, or a suggested list of potential arbitrators). The Union submitted its Demand for Arbitration, but failed to specify an agency or list. That is not a fatal flaw that precludes the arbitrator from hearing the case.

In Safeway Stores 95 LA 668, 695 Arbitrator Goodman wrote:

As a general statement, forfeiture of a grievance based on a missed time limits should be avoided whenever possible, subject of course to the caveat that an arbitrator's decision to proceed on the merits is not in disregard of the language in the agreement. This is another way of saying that where language scan be reasonably interpreted to avoid forfeiture, that interpretation should be selected over one which would deny access to the grievance arbitration procedure.

The motion of the Department to challenge the Arbitrability is denied and the merits of the timely filed grievance will be examined. Determining which agency is not the trigger for the arbitration. The filing of the demand for arbitration is the critical element in the CBA.

The Burden of Proof

In How Arbitration Works, Eighth Edition, Evidence, Burden of Proof, 8-106 the authors discuss burden of proof in discharge cases:

In discharge cases, depending on the nature of the violation charged, arbitrators may require proof by a “preponderance of evidence,” or even by “clear and convincing evidence,” where the violation is in the nature of a criminal offense or otherwise seriously impugns the employee’s character.

Here the issue involves a police officer who was accused of filing false documentation in support of his work logs and lying to his supervisors. Therefore, the burden is on the Department to prove by clear and convincing evidence.

Does Vance’s conduct justify termination?

The position of Enforcement Officer for the Department in Columbia County, and many similar sized counties in Oregon, may be the ideal job for a person who is an outdoorsman and who values the land, the water, and fish and animals living in that environment. That person could be the only enforcement officer in the County. The office could set his/her own working hours, which must total 173 hours in a 28-day period. The officer could work in the morning or evening as they choose. A Sergeant was the immediate supervisor. The Sergeant did not live the county, and was responsible for supervising the officers in three of four counties in the area. The officers were responsible for patrolling the rivers and forests in their county.

The officers were required to sign in to the State Patrol Radio from their truck, or call on their government provided work cell phone to report that they were on duty, In addition, the officers were required to log in the CODY system when they started work, and log off at the end of the day. For their own safety, and to be available to called to assist other Enforcement Officers or Police or Sheriffs, they had to CODY in periodically during their work day. The officer was to complete their logs and paperwork on a daily basis.

Vance was on vacation on July 5 and 6, 2017. He was schedule to work on July 7th. He was not scheduled to work on July 8th. He and his girlfriend went with another couple to Lincoln City, Oregon, which is located on the Pacific Ocean, 369 miles from Dayton and Columbia County. While he was in Lincoln City, he made two phone calls on his work cell phone responding to a calf being killed by a cougar at 8:20 a.m. and a second call, to secure a houndsman, to hunt for the cougar at 8:50.

He and his girlfriend then proceeded to return to Dayton. They were stopped and his girlfriend, who was driving, was issued a warning by an Oregon State Patrol Office at mile marker 119, on State Highway 730, at 4:11 pm on July 7th. Later, when Sergeant Mossman checked his records for Vance's work on July 7th, Vance wrote on his logs that he worked nine hours that day. Additional log entries for "1000 Touchet" and "1400 Tucannon" were added identifying the rivers in Columbia County, and the time he visited them. At the time of pre-disposition hearing, the Oregon State Patrol Stop was not known by Sergeant Mossman.

Vance's account of what he did when he returned to Dayton on July 7th was not credible. The Oregon State Patrol warning was issued to his girlfriend, who was driving the car when it was stopped at 4:18 p.m., This means it would take at least one hour and sixteen minutes to arrive at Dayton. It would have been impossible for Vance to work nine and half hours on July 7th when he could not have arrived in Dayton before approximately 5:30 p.m. that day.

Vance falsified other records on January 26, 2017 when he claimed he worked eight hours for the Garfield County Sheriff's Department and also claimed eight hours of sick time the Fish and Wildlife Department. He claimed later that he should have entered the sick time as annual leave time. He never reimbursed the Fish and Wildlife Department for his mistake.

On June 26, 2017 Vance billed the Department for firearms training which Sergeant Mossman's required at the Garfield County Sheriffs Office. Sheriff Drew Hyer testified in response to a question by Attorney Knoll:

Q: And you specifically remember – either just or at some other point, you now specifically remember contacting officer Vance and telling him that he didn't put time in for it and that he would receive six hours is that your testimony?

A. Correct.

Vance did not reimburse either of the Departments' although he was paid for the same time by each department. Since he did specifically make a claim the time, that allegation of double billing has not been adequately proven.

On October 20, 2017, Vance was invited to attend an investigative meeting attended by Sergeant Mossman, Captain Rahm and Captain Anderson. Vance was accompanied by Lenny Hahn, the Guild Representative. Vance was asked about his activity on July 7th. He lied, claiming he worked on the calf depredation case in the morning, and then patrolled the Touchet and Tucannon Rivers in early afternoon. He claimed to have worked nine hours that day. When Rahm produced the records of the phone calls from Lincoln City, Vance said he could have made a mistake.

Vance contends that the Enterprise Wire and the Enterprise Independent Union, 46 LA 359, seven tests, outline by Arbitrator Daugherty's to be applied in discipline cases were not applied. The only one that caused me concern was whether the Department's penalty was consistent with the treatment of other employees.

On November 2, 2015, a memo of concern was written by Sergeant Leonetti, about Officer Loc Do, the only officer in the Department who spoke Vietnamese, Leonetti was rejecting the total time Loc Do claimed to work because it was not supported by his CODY Logs. Do was advised that if he did not correct the problem, or if there were other similar incidents, he would be subject to discipline.

The second case involved Officer Zach Gaston, who initially denied writing an anonymous letter informing the Deputy Chief of another officer threatening to shoot another commander. Later, on October 6, 2015, Gaston admitted that he was the author of the letter, acknowledged his guilt, and asked for mercy. He was given a five month 10% cut in his pay as his discipline. The facts in these cases are not similar to Vance's conduct in creating false record entries claiming work was done by him in Columbia County, when he was actually not there, but out of the state.

In *Just Cause, the Seven Tests*, 2nd Ed. 327, Proving Inconsistent Enforcement, Koven and Smith wrote:

In other words, it must be shown that prohibited activity took place with the company's "permission," even if the permission was given not explicitly, but only by management's closing its eyes.

Until Sergeant Mossman, reviewing Vance's claim to work nine hours on July 7th, and finding no supporting CODY or Dispatch logs, became suspicious of Vance's entries, there was never any Department permission to not accurately report entries.

In the 3rd Edition of *Just Cause, the Seven Tests* 467, Where Progressive Discipline Does Not Apply, the authors wrote:

Certain types of misconduct often are considered not to be subject of the requirements of progressive discipline, either because the misconduct is so serious that the employment relationship cannot survive it.

On p.468 they wrote:

It has also been held that a past failure to discharge for a given offense of this nature, cannot "be considered a waiver of the right to discharge."

On September 1, 2017, a new Department Enforcement Chief was appointed. Chief Steve Bear held a similar position in an agency in the State of Alaska. He sent an email to all officers expressing his concerns for honesty. He wrote:

I have seen a few officers who made a mistake and lied to cover it. Eventually, the cover up was worse than the act and they lost their career. If you make a mistake, own it, none of us are perfect and I don't expect perfection. I do expect honesty.

Chief Bear's email to all Enforcement Officers, indicates that a past failure to discharge is not a license to ignore a policy. It is a clear directive to prioritize honesty in law enforcement officers.

In Oakland, California a law enforcement agency terminated an officer who made deliberately untruthful representation to a Court of a material fact. Arbitrator Robert W. Landau upheld the discharge in City of Oakland and Individual Grievant, 128 LA 231. Landau wrote as follows:

While Grievant's good work performance record and lack of prior discipline are commendable, they do not negate the specific evidence of misconduct presented by the City. Even the best cops are capable of doing bad things.

Falsifying records and lying have never received the permission of the Department. Until 2010 it was not sanctioned by any law enforcement agency. The Kitsap County Sheriff attempted to terminate a deputy who had made false statements. In Kitsap County Deputies Guild and Kitsap County 219 P.3rd 675 (2009) the Supreme Court of Washington wrote as follows:

Washington statutes prohibit making false statements to a public officer but there is no statute or other explicit, well defined, and dominant expression of public policy that requires the automatic termination of an officer found to be untruthful.

In 2010, six months after the Kitsap County case, the legislature passed a specific statute relating to law enforcement officer and their oath of office. That statute RCW 43.101.021, reads as follows:

43.101.021. It is the policy of the state of Washington that all commissioned, appointed, and elected law enforcement personnel comply with their oath of office and agencies policies regarding the duty to be truthful and honest in the conduct of their official business.

If he had worked as part of a team of researchers in biology or animal science for the Department, he would not be in difficulty. For many years Vance was an exemplary officer. Because he was given arrest powers, he was useless to the Enforcement Division of the Department, once he lied about his activities. He became an unreliable and impeachable witness.

As a Circuit Court Judge in an urban area, in another state for eleven years, I heard hundreds of criminal and civil cases. The police official who is not truthful is no use to the law enforcement agency. The officer cannot serve as an effective witness. If the officer has lied, it must be disclosed to the Attorneys involved in the case, specifically in criminal cases. The jury will be instructed to consider the lies when it weighs the officer's credibility.

Conclusion

There is clear and convincing evidence that on July 7, 2017, Vance lied to Captain Rahn, Captain Anderson and Sergeant Mossman in his answers. There is also clear and convincing evidence that he falsified his work times on that date and January 26, 2017. Unfortunately, that is all that is necessary to end his career as a law enforcement officer.

G. AWARD

The grievance will be denied.

Dated the 9th day of October, 2019

Frederick P. Kessler
Arbitrator
FMCS Arbitrator 2694