

**Before Arbitrator Joseph T. Moriarty**

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In the Matter of Arbitration  
Of a Dispute Between

[REDACTED]

Grv. Nos. GR230324-BFHT  
GR230324-HYPY

DAF: DH 2022-0040

Arb Ref: 230426-2

F [REDACTED], M [REDACTED], and L [REDACTED], J [REDACTED]  
29-day Suspensions

and

[REDACTED]

**SHERIFF'S OFFICE**

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**Appearances:**

[REDACTED]

[REDACTED]

**ARBITRATION AWARD**

Pursuant to the provisions of their collective bargaining agreement, the [REDACTED] (hereinafter referred to as either "the Union" or [REDACTED]), the [REDACTED] Sheriff's Office (hereinafter referred to as the "the Sheriff") selected the undersigned as the arbitrator to hear and decide grievances over the 29-day suspensions issued by the Sheriff to Deputy Sheriffs M [REDACTED] F [REDACTED] ("F [REDACTED]") and J [REDACTED] L [REDACTED] ("L [REDACTED]"). The hearing was opened on July 27, 2023, and adjourned to permit the Union to review new evidence that was produced by the Sheriff on the evening of July 26, 2023. The hearing resumed on October 3, 2023. The parties submitted evidence and made oral arguments

on their positions concerning the issues presented in the case. No issues were raised concerning the Arbitrator's jurisdiction or the arbitrability of the grievances.

### **I. Issue**

Does the Sheriff have just cause to suspend the F [REDACTED] and I [REDACTED] for 29 days? If not, what is the appropriate remedy?

## **II. Relevant Contract Provisions, Department Rules, Regulations, and Policies**

### **A. Contract Provisions**

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## **ARTICLE XI - GRIEVANCE PROCEDURE**

### Section 11.1 Policy:

The provisions of this Article supplement and modify the provisions of the Employee's Grievance Procedure applicable to all employees.

The purpose of this Article is to specify the method by which employees may present grievances and seek redress. This policy shall apply to all bargaining unit employees under the jurisdiction of the Employer.

This policy shall apply to all bargaining unit employees without discrimination as to age, sex, marital status, race, creed, color, national origin, physical handicap, political affiliation or political activity.

All employees shall have a right to file a grievance and shall be assured freedom from coercion, restraint, or reprisal.

The term "Employer" as read throughout this procedure refers to both the County and the Sheriff as "Joint Employers." It is recognized that because a joint employer relationship exists, certain grievances are appropriately answered by the elected official and others by county administration, depending on the subject matter of the grievance.

The Employer is committed to fair employment practices and recognizes its responsibility to review and make reasonable effort to resolve employees' grievances-. An employee is encouraged first to discuss the problem with the immediate supervisor. If the employee feels the problem has not been satisfactorily adjusted as a result of this discussion, the employee may advance review in accordance with this grievance procedure.

**Section 11.2 Definition:**

A grievance is a difference between an employee or the Union and the employer with respect to the interpretation or application of, or compliance with the terms of this Agreement between the Employer and Union.

An insurance dispute between the employee (and his/her covered dependent) and the processor of claims shall not be subject to the grievance procedure provided for in this Agreement. Employees shall continue to be afforded an opportunity to present appeals of such insurance disputes to the County in person. The County will endeavor to resolve such disputes with the processor of claims.

**Section 11.3 Representation:**

Only the aggrieved employee(s) and/or representatives of the union may present grievances. Employees may take up grievances through Steps One to Three either on their own and individually or with representation by the Union. If an employee takes up a grievance without Union representation, any resolution of the grievance shall be consistent with this Agreement and the Union representative shall have the right to be present at such resolution. A grievance relating to all or a substantial number of employees or to the Union's own interests or rights with the Employer may be initiated at Step Three by the Union.

All discipline emanating from an investigation conducted by the Office of Professional Review (OPR) that the member wishes to grieve, may be initiated at Step Four of the grievance procedure.

Upon mutual agreement, grievances regarding financial matters or human resources matters may be initiated at Step Three of the grievance procedure. Grievances raising discipline issues shall not be deemed to regard financial matters within the meaning of this paragraph.

**Section 11.4 Grievance Procedure Steps:**

The steps and time limits as provided in the Employer's Grievance Procedure are as follows:

<u>Step</u>	<u>Submission Time Limit This Step</u> calendar days	<u>To Whom Submitted</u>	<u>Time Limits Meeting</u> calendar days	<u>Response</u> calendar days
I	15 days	Division Chief/Designee	7	7
2	5 days	Chief Deputy/Designee	7	7
3	5 days	Sheriff/Designee or Chief Bureau of Human Resources/Designee	15	15
4	30 days	Impartial Arbitrator	30	30

HEARING TO BE HELD NOT LATER THAN 90th DAY AFTER FILING, UNLESS MUTUALLY AGREED OTHERWISE.

Step One

1. The employee obtains a Grievance Form from the Union Steward.
2. The employee writes the nature of the grievance and the resolution sought on the Grievance Form, signs it, and returns it to the Steward who will present it to the Division Chief/Designee. The employee, steward, and Division Chief/Designee will each keep their appropriate copy.

The above requirement for the filing of Step One Grievances will be satisfied at the following facilities by the faxing of the Step One Grievance to a number designated by the Employer within the prescribed time limits:

- A. CIVIL PROCESS DISTRICT #2
  - B. CIVIL PROCESS DISTRICT #4
  - C. CIVIL PROCESS DISTRICT #5
3. Within the seven (7) calendar days after receipt, the Division Chief/Designee shall meet with the employee to discuss the grievance.
  4. Within the seven (7) calendar days after the meeting, the Division Chief/Designee answers the grievance on the Grievance Form and transmits the answer to the employee.
  5. If the answer is satisfactory, the grievance procedure is concluded at Step I.
  6. If the answer is not satisfactory, the employee may, within the five (5) calendar days after receipt, or if no answer is given, advance the grievance to Step 2.
  7. Failure to advance the grievance within five (5) calendar days after the Step I answer is due concludes the grievance procedure.

Step Two

1. Within five (5) calendar days after receipt of the Step 1 answer, the employee states that the answer given at Step 1 is unsatisfactory, including specific reasons as to why the answer given at Step I is unsatisfactory, writes the date referred to Step 2, signs the form, and returns it to the Steward. The Steward presents the grievance to the ChiefDeputy/Designee.

2. Within seven (7) calendar days of receipt of the letter, the Chief Deputy/Designee will hear an appeal and submit a written decision to the employee within seven (7) calendar days.
3. If the answer is satisfactory or if the Union fails to advance the grievance within five (5) calendar days after the Step 2 answer is due, the grievance procedure is concluded.

### Step Three

1. Within five (5) calendar days after receipt of the Step 2 answer, the Employee states that the answer given at Step 2 is unsatisfactory, including specific reasons as to why the answer given at Step 2 is unsatisfactory, writes the date referred to Step 3 signs the form, and returns it to the Steward. If the Union concurs the Steward will advance the Grievance to the Sheriff/Designee.
2. Within fifteen (15) calendar days of receipt of the letter, the Sheriff/Designee will hear an appeal and submit a written decision to the employee within 15 calendar days.

### Step Four - Impartial Arbitration

1. If the Union is not satisfied with the Step 3 answer, it shall within thirty (30) days after receipt of the Step 3 answer submit in writing to the Employer notice that the grievance is to enter impartial arbitration.

The Employer and the Union shall agree to a list of 7 arbitrators who will, as a condition of being on the permanent panel, agree to schedule the hearing within 14 days of the date of notification of selection. As a further condition of being placed on the permanent panel, the arbitrator will agree to issue a decision within 10 days of the date of the hearing. Unless mutually agreed otherwise, the parties mutually agree to waive post-hearing briefs to expedite the decision by the arbitrator.

The employee will not serve a suspension if the Employer cannot schedule the hearing within 90 days and conversely, the employee will serve the suspension prior to hearing if the Union/employee cannot schedule the hearing within 90 days, unless the parties mutually agree otherwise.

The decision of the Arbitrator shall be binding.

2. Expenses for the Arbitrator's services and the expenses which are common to both parties to the arbitration shall be borne equally by the County and the Union. Each party to an arbitration proceeding shall be responsible for compensating its own representatives and witnesses.
3. The Arbitrator, in his/her opinion shall not amend, modify, nullify, ignore or add to the provisions of this Agreement. The issue or issues to be decided will be limited to those presented to the Arbitrator in writing by the Employer and the Union. His/her decision must be based solely upon his interpretation of the meaning or application of the express relevant language of the Agreement.

4. All hearings will be held as close to the grievant's worksite as is practicable. The employer will, upon reasonable notice from the Union, release from duty any employees requested by the Union as representatives or witnesses.
5. The hearing shall be informal. There will be no stenographic recording of the proceedings unless otherwise agreed.

Section 11.5 Time Limits:

The initial time limit for presenting a grievance shall be fifteen (15) days. Time limits may be extended by mutual agreement in writing between the employee and/or the Union and the Employer.

All investigations conducted by the Office of Professional Review shall be conducted and completed within a reasonable time period based upon the complexity of the investigation and the workload of the Office of Professional Review investigators.

An open investigation into an officer will not preclude that officer from volunteering for overtime or participating in bids. Any OPR investigation resulting in the de-deputizing of an officer may be moved to expedited arbitration within thirty (30) days of said action. The only issue presented at the arbitration will be whether the de-deputization was just. If the employer cannot proceed and barring the filing of criminal charges and/or charges seeking termination before the Cook County Sheriffs Merit Board, the officer shall be re-deputized, if he/she is otherwise eligible for re deputization. A group of Arbitrators shall be selected who agree to the conditions and procedures put into place and who agree to render their decision within thirty (30) days.

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Section 14.8 Discipline:

The Employer shall not take any disciplinary action against an employee without just cause. Employees who are to be or may be disciplined are entitled to Representation consistent with the Bill of Rights. The Union and the Employer agree that discipline should be timely, progressive and accompanied by counseling where appropriate. It is understood that employees are subject to the general orders, rules and regulations of the Employer. Notification to Employees and acknowledgment of disciplinary infractions to Employer shall be delivered electronically.

Upon hire, the Employer shall provide each Deputy Sheriff covered by this Agreement with an up-to-date copy of all general orders. Upon issuance of any newly published General Order(s) or addenda, each Deputy Sheriff covered by this agreement will be tendered a copy of such Order(s) and/or addenda. Each Deputy Sheriff shall sign for his/her copy upon receipt of

these general orders and/or addenda. A current copy of all General Orders will be kept by each Assistant Chief in each unit/facility for reference by the Deputies.

Forms of Discipline:

1. Summary Punishment; The employer shall reserve the right to implement summary punishment, reprimand, and suspensions of up to 29 days. Reprimands shall be grievable, up to and including Step 3 of the Grievance Procedure.

Deputies who are disciplined or recommended for discipline trader Summary Punishment may choose to appeal either through the Sheriff's "Summary Punishment Action Request" form (SPAR) or the Grievance Procedure, but not both remedies. If the SPAR form is chosen, the steps of appeal are outlined by the Court Services Department General Order 1375.1 and D.C.S.I. General Order 3.3 ADD VII (whichever is applicable). If the Grievance Procedure is chosen, the steps outlined elsewhere in this Agreement shall be followed. In either case, the Deputy shall check the appropriate box on the SPAR form, indicating which appeal process, if any, he chooses to take.

A SPAR will be disregarded and removed from the employee's personnel file after eighteen (18) months from the occurrence, provided that the employee has received no other SPARs during this eighteen (18) month period of time.

A SPAR is 29 days and no time served until the grievance and arbitration procedure is exhausted. It includes 90-day expedited arbitration.

2. Suspension of up to and including 29 days: Any suspension imposed by the Employer on an Employee up to and including 29 days, may be appealed at all steps of the grievance procedure or the Sheriff's appeal procedure as outlined in General Order 7000, but not both remedies.

3. Suspensions in excess of twenty-nine (29) days (imposed post-ratification), excluding recommended discipline where demotion(s) and/or termination(s) is sought, shall be subject to Impartial Arbitration and the following procedure:

Excluding recommended discipline that includes demotions and/or terminations that impact merit rank, all other suspensions in excess of twenty-nine (29) days shall be adjudicated by Impartial Arbitration that shall be scheduled within sixty (60) calendar days from the date that the employee is served with the discipline. If the Arbitration is not scheduled within sixty (60) days or does not occur as scheduled, the Sheriff may impose the discipline prior to the Arbitration taking place. Suspensions under this Section shall not be subject to Steps 1 through 3 of the grievance procedure of this Agreement. Upon service of discipline to the Employee, the Employer shall also notify the Union of the suspension.

In the event that the matter proceeds to Arbitration, the Employer and the Union shall agree to a list of seven (7) arbitrators who will, as a condition of being on the permanent panel, agree to schedule the hearing within fourteen (14) calendar days of the notification of selection. As a further condition of being placed on the permanent panel, the arbitrator will agree to issue

a decision within ten (10) calendar days of the date of the hearing. The parties may mutually agree to waive post-hearing briefs to expedite the decision by the arbitrator. The decision of the Arbitrator shall be binding.

Expenses for the Arbitrator's services and the expenses which are common to both parties to the arbitration shall be borne equally by the County and the Union. Each party to an arbitration proceeding shall be responsible for compensating its own representatives and witnesses.

The Arbitrator, in his/her opinion, shall not amend, modify, nullify, ignore or add to the provisions of this Agreement. The issue or issues to be decided will be limited to those presented to the Arbitrator, in writing by the Employer and the Union. His/her decision must be based solely on the interpretation of the meaning or application of the express relevant language of the Agreement. In issuing his/her decision, the Arbitrator shall be bound by the precedential rulings of the Cook County Sheriff's Merit Board.

All hearings will be held as close to the grievant's work site as practicable. The Employer will upon reasonable notice from the Union, release from duty any employees requested by the Union as representatives or witnesses.

The hearing will be informal. There will be no requirement that a stenographic recording of the proceedings unless otherwise agreed. Excluding recommended discipline that includes demotion(s), and/or termination(s), suspensions in excess of 29 days shall not be presented to the Cook County Sheriff's Merit Board. The parties agree that the Arbitration forum for suspension arbitrated under this provision shall not be challenged as it relates to the jurisdiction of the Cook County Sheriffs Merit Board. The Union and Employer agree that an Arbitrator's finding that a suspension be imposed, or any other relief so found, shall be served by the employee.

## **RELEVANT POLICIES AND PROCEDURES**

### **POLICY 101.5**

#### **101.5 CONDUCT WHICH MAY RESULT IN DISCIPLINE**

The following list of causes for disciplinary action constitutes a portion of the disciplinary standards of the Sheriff's Office. 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 service. Conduct which may result in discipline includes, but is not limited to, the following

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#### **101.5.5 PERFORMANCE**

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(af) Failure to take reasonable action when required by law, statute, resolution, or approved Sheriff's offices policies, practices or procedures.

(Er. Exh.5 )

## **PROCEDURE 500**

### **Protective Orders Procedure**

#### 500.1 PURPOSE AND SCOPE

The purpose of this procedure is to provide the Cook County Court Services Department Civil Process Unit guidelines for the investigation and assignment of protective orders.

This procedure is not meant to replace the responsibilities or requirements described in the Short Form Notification of Protective Orders Procedure.

#### 500.2 POLICY

The Cook County Court Services Department Civil Process Unit will make every reasonable effort to serve protective orders in compliance with the respective Illinois state laws.

Petitions (both filed and granted) for emergency stalking, no contact orders, civil no contact orders and emergency orders of protection shall not be made publicly available until the petition/order has been served on the respondent (740 ILCS 21, 22).

#### 500.3 PROCEDURE

All protective orders issued by the Circuit Court of Cook County and received by the Sheriff's Office should be entered into LEADS by the authorized member as soon as practicable, but prior to the end of the member's shift.

All protective orders received by the civil process district for service shall be sorted by a supervisor and assigned to a sworn member. Pursuant to 750 ILCS e4121O(c), service of process for protective orders will be expedited by the Sheriff's Office. The summons shall be served at the earliest time and shall take precedence over other summonses except those of a similar emergency nature.

If information dictates that an attempt should be made outside of the parameters of this procedure, the respective sworn member shall contact their on-duty supervisor and make every effort to enforce the remedies and serve the protective order.

The assigned sworn member shall complete a thorough investigation utilizing every available investigative tool (e.g., LEADS, the jail management system, third-party services). All investigations shall be documented in the Officer Safety Alert section of the Information Storable Tracking and Retrieval system (iSTAR). The sworn member should indicate any enforceable remedies. If there is not safety information to add to iSTAR, the sworn member should note the date in which the investigation was completed.

A sworn member shall promptly notify their supervisor if the respondent has an active arrest warrant, an extensive criminal history or any of the following remedies are ordered:

- (a) Return of minor;
- (b) Exclusive possession;
- (c) Weapon surrender; or
- (d) Any other special instructions for the Court (e.g., Remedy 17).

The assigned sworn member shall attempt service on the first day the protective order is assigned. The Attempt and any results shall be documented in iSTAR.

Once the protective order is served, the serving sworn member or an authorized designee shall make all reasonable attempts to notify the petitioner of the successful service. The sworn member making the notification shall document the notification in iSTAR.

If a sworn member is not successful in serving a protective order, they shall contact the petitioner for additional information and provide the petitioner with the appropriate contact information, including an email address (ccso.protectiveorders@[REDACTED].gov), for any new information that would assist in service.

The sworn member shall then complete either of the following:

- A second attempt at service shall occur within four days of the receipt of the protective order if new information is received.
- The supervisor shall assign a sworn member within four days of the receipt of the protective order to gather information from a canvas of the listed address if no new information is received. The results of the canvas shall be documented in iSTAR.

A minimum of three attempts should be made for each protective order on varying days and times (e.g., weekday vs. weekend, day vs. night) before a final disposition is entered into iSTAR. Supervisor approval shall be obtained prior to entering a "Not Served" disposition prior to the die date. The sworn member or the authorized designee entering the "Not Served" disposition shall note the approving supervisor's name and star number in the appropriate section in iSTAR.

An unserved plenary protective order shall, after all attempts have been exhausted and no new information is available, be reviewed by a supervisor and assigned to a sworn member for an attempt to serve on a monthly basis, until the die date. Any research or actions taken by sworn members shall be documented in the appropriate section in iSTAR.

The on-duty supervisor shall review every protective order to ensure that the appropriate steps have been completed.

(Er. Exh. 1)

### III. Factual Background

The Grievants. I [REDACTED] is a 23-year veteran of the Sheriff's office. He has been assigned to the civil process unit since 2017. His disciplinary record includes five disciplinary incidents between 2010 and 2021 for a variety of infractions: one involving use-of-force documentation, one involving a Brady violation, one involving unspecified body-worn camera issues, and two others involving unspecified causes. His most serious disciplinary penalty was a 10-day suspension for a Brady violation in 2014. (Er. Exh. 2, at p. 79)

F [REDACTED] is a 19-year veteran of the Sheriff's office. He has been assigned to the civil process unit since 2011. He has no prior discipline. (Er. Exh.2 at p. 80)

The Emergency Order of Protection ("EOP"). On June 22, 2022, [REDACTED] Heaton ("Heaton") sought an emergency order of protection ("EOP") from the Circuit Court [REDACTED] [REDACTED] against [REDACTED] McKay ("McKay"). Heaton and McKay are the parents of a 14-year-old daughter, B [REDACTED]. McKay failed and allegedly refused to return B [REDACTED] to Heaton's custody on the day and hour designated by a prior court order or agreement. Heaton's petition was the culmination of a long history of disputes between Heaton and McKay about B [REDACTED]'s custody and visitation with McKay, which included police involvement as recently as the night before EOP was sought.<sup>1</sup>

McKay filed his own emergency motion on June 22, 2022, in which he sought a change in custody for B [REDACTED] from Heaton to McKay. He alleged, among other things, that B [REDACTED] did not want to stay with Heaton and that she was afraid of being in her home. He also alleged that Heaton suffered from bipolar disorder and that there was frequent drinking in Heaton's home. The record does not indicate when McKay's motion was scheduled to be heard or if it was ever heard.

Heaton's petition was heard by Associate Judge [REDACTED] on June 22, 2022, late in the day, apparently without notice to and outside the presence of McKay. At 4:00 p.m. that day, Judge [REDACTED] granted Heaton's petition and issued an EOP based only on evidence proffered by Heaton. Among other things, the order directs McKay to appear for a hearing via Zoom on July 11, 2022, or risk issuance of a plenary order of protection against him. For

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<sup>1</sup> McKay also complained to the Illinois Department of Children and Family Services about alleged neglect of the minor by Heaton.

purposes of the instant grievances, the critical part of the EOP is found on Page 4. where it contains the following order to return B [REDACTED] to Heaton's custody:

Respondent shall personally return the children to: ~~1453 North Monticello Avenue, Apt 1, 60651~~ *2150 North California Chicago* on June 22, 2022 at 9:00 p.m. in the presence of the Chicago Police Department.<sup>2</sup>

The struck-through and italicized portions above were initialed by Judge [REDACTED] Heaton's home address is 1453 [REDACTED] 2150 [REDACTED] is the [REDACTED] Police Department's ("CPD") 14th District Station. The record does not indicate why or at whose instigation Judge [REDACTED] changed the site at which custody was to be transferred or why she required the presence of CPD at her return.

After the EOP was issued, the Clerk of the Circuit Court of [REDACTED] transmitted it to the [REDACTED] Sheriff's Office for service on McKay. It was transmitted to the Sheriff's [REDACTED] Office. The record does not indicate who received it; however, Sergeant J [REDACTED] Lee ("Lee") told the Sheriff's Office of Professional Review ("OPR") that Sergeant [REDACTED] D [REDACTED] ("D [REDACTED]") printed out the EOP and assigned it to I [REDACTED] and F [REDACTED] (*Id.* at pp. 5-6) F [REDACTED] and I [REDACTED] also testified that D [REDACTED] called them while they were in the field, and assigned it to them as a return of a minor to be executed as soon as possible.

D [REDACTED] did not testify at the hearing. There is a summary of what he told OPR during its investigation. (Er. Exh. 2 at p. 7) There, D [REDACTED] reportedly said to investigators that the practice within the Sheriff's office is that a sergeant reviews all EOPs to determine the remedy that the court is ordering and prioritizes those that require the return of a minor. (*Id.*) Where there is a return of minor required, the sergeant reaches out to the petitioner who is seeking the return to coordinate with officers in the field. (*Id.*) Sergeant J [REDACTED] K [REDACTED] ("K [REDACTED]"), who testified on behalf of the Union, described a similar process.

D [REDACTED] did not remember which sergeant reviewed Heaton's EOP, though he indicated to OPR that besides himself there were only two other sergeants on duty at the [REDACTED] Civil Process Unit. (*Id.*) D [REDACTED] was the sergeant-in-charge. (*Id.*) Sergeant W [REDACTED] B [REDACTED] was the administrative sergeant and Lee was the field sergeant. (*Id.*)

According to both F [REDACTED] and I [REDACTED] D [REDACTED] called them in their squad car to assign the EOP at approximately 6:00 p.m. D [REDACTED] told them that the EOP required the return of a

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<sup>2</sup>The EOP is a form order with fill-in-the-blanks and check boxes.

minor that had to be executed as soon as possible. The EOP was entered on the Law Enforcement Automated Data System (LEADS) system<sup>3</sup>, which I [REDACTED] and F [REDACTED] could access in their car, but LEADS does not contain a copy of the EOP or its precise wording. Dragovich told them to reach out to Heaton and to get a copy of the order from her to serve on McKay.

F [REDACTED] and I [REDACTED] met with Heaton. F [REDACTED] body-worn camera footage<sup>4</sup> shows that, while in their squad car with Heaton, just prior to going to McKay's address, Frias and Lenti had a copy of the EOP and it was opened to Page 4 where the precise details concerning the manner of B [REDACTED]'s transfer to Heaton are found. I [REDACTED] and F [REDACTED] let Heaton out of their car apparently on North Avenue, down the street from McKay's residence at 1628 North Rockwell. They told her to wait on North Avenue while they contacted McKay. They drove the short distance to McKay's 3-flat apartment building and rang McKay's bell. McKay came down from his second-floor apartment in fairly short order with a file of papers. Body-worn camera footage shows F [REDACTED] and I [REDACTED] greeting McKay on the front porch of the 3-flat. (Er. Exh. 4) After greeting McKay, F [REDACTED] handed the EOP to McKay. (*Id.*)

I [REDACTED] began to explain the situation. (*Id.*) He prefaced things by saying that F [REDACTED] and I [REDACTED] were "just the messengers" and explained that Heaton obtained a court order that required B [REDACTED] to be returned to Heaton's custody. (*Id.*) He explained that it was temporary and that McKay could go to court to explain his side of things. (*Id.*) McKay interjected that he was just trying to keep his daughter safe and that she had told police the night before that she did not feel safe with her mother and her stepfather. (*Id.*)

By that point, [REDACTED] Rhodes ("Rhodes"), McKay's life partner, had also come down from the second-floor apartment and began to participate in what was becoming a more heated conversation. (*Id.*) I [REDACTED] then said that B [REDACTED] had to return to Heaton's custody and that if anything happened to her, McKay should take it up with law enforcement and the courts at that time. (*Id.*) Both McKay and Rhodes expressed outrage that B [REDACTED] would have to be harmed before anything could be done. I [REDACTED] said they were twisting his words. (*Id.*) McKay asked to

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<sup>3</sup> LEADS is a statewide data system used by law enforcement agencies.

<sup>4</sup> The Sheriff proffered four body-worn camera videos which were admitted into evidence as Er. Exhibits 4A-D. The footage or excerpts of the footage are from the following officers respectively: 4A - I [REDACTED]; 4B - F [REDACTED] while at McKay's address; 4C - Lee; and 4D - F [REDACTED] while on North Avenue, en route to McKay's address and then encountering McKay. Excerpts were played at the hearing. I have reviewed all of the footage. For ease of reference, I will only refer to Er. Exhibit 4 as the many of the same scenes are depicted in each separate exhibit.



asked L [REDACTED] to find out the disposition of that (which was unfounded), and asked L [REDACTED] to get additional information from D [REDACTED]<sup>5</sup>. (*Id.*) Ultimately with the help of McKay, B [REDACTED] agreed to go with police to meet her mother on North Avenue. (*Id.*) The Sheriff's office involvement in the service of the EOP and transfer of B [REDACTED] to Heaton ended at 8 p.m. (*Id.*) (Exh. 2, at p. 15)

F [REDACTED] filed incident report SO-2200045595 the following day. (Exh. 2 at pp. 22-23) The report is countersigned by Lee. (*Id.*) The report roughly tracks the foregoing with some embellishments. It also indicates that CPS took McKay into custody later on in the evening of June 22, 2022, for an alleged violation of the EOP.

McKay filed a complaint with the Sheriff's office about Lee, L [REDACTED], and F [REDACTED] on the evening of June 23, 2022. He complained that L [REDACTED] and F [REDACTED] did not give him an opportunity to read the EOP and then took it from him. (Er. Exh. 2 at pp. 76-77) He said that the EOP required him to bring B [REDACTED] to the 14th District Police Station later that night and that he was not in violation of the order when L [REDACTED] and F [REDACTED] threatened him with a Class 4 felony charge. (*Id.*) McKay also reported that B [REDACTED] ran away from Heaton on the night of June 22, 2022, after being returned to her. (*Id.*) He drove B [REDACTED] back to her mother's home and called the police. She was returned to Heaton again at 8:51 p.m. in the presence of police. (*Id.*) McKay reported that police did take him into custody despite the fact that he had called them. (*Id.*) McKay did not report on what became of his arrest. In his OPR interview, McKay also complained that L [REDACTED] and F [REDACTED] were abusive in the way they grabbed Rhodes and cited her stature (5 foot, 5 inches tall, 110 pounds). (Er. Exh. at p. 4-5)

OPR conducted an investigation that substantiated that F [REDACTED] and L [REDACTED] violated Sheriff's policy 101.5.5(af), which prohibits a deputy sheriff's "failure to take reasonable action when required by law, statute, resolution, or approved Sheriff's office policies, practices or procedures." (Er. Exh. 2 at pp. 7-8; Er. Exh. 5) The substantiated findings do not indicate what "reasonable action" they were required to take by Sheriff's office policies, practice, or procedures and does not cite any such practice or policy. (*Id.*) The OPR findings do conclude that the EOP should have been treated just as a service of the EOP on McKay and not as a return of minor EOP. (*Id.*)

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<sup>5</sup> L [REDACTED] was communicating with D [REDACTED] via telephone and text while on the scene.

OPR also substantiated that Lee violated Sheriff's policy 101.5.7(a) which prohibits a supervisor's "failure to properly monitor subordinates and to take appropriate action to ensure that members adhere to the Sheriff's Office policies and procedures." (*Id.*) Lee is cited for "failing to follow Procedure 500-Protective Order Procedure 500.3: The on-duty supervisor shall review every protective order to ensure that appropriate steps have been completed." (*Id.*; Er. Exh. 1)

After a command channel review that concluded on February 10, 2023, the Sheriff issued Lee a 10-day suspension and issued both F [REDACTED] and I [REDACTED] a 29-day suspension. (Er. Exh. 3) No discipline was issued to D [REDACTED] or any other Sheriff's office staff. The Union grieved I [REDACTED] and F [REDACTED]' discipline. (Un. Exhs. 1 and 2) This proceeding followed.<sup>6</sup>

#### **IV. The Arguments of the Parties**

##### **A. The Sheriff's Office's Position**

The Sheriff argues that the EOP's language is plain and clear, that I [REDACTED] and F [REDACTED] had the EOP, had the EOP opened to the page that described how Bethany was to be returned to the mother and the I [REDACTED] and F [REDACTED] did not follow the EOP's direction. That resulted in a citizen being detained, and wrongly threatened with arrest and Class 4 felony charges. It argues that their performance was seriously deficient and resulted in harm to civilians. Therefore it concludes that the suspensions are justified.

##### **B. The Union's Position**

The Union argues that I [REDACTED] and F [REDACTED] are being scapegoated for a failure by management to follow the Sheriff's Office procedures and for misdirecting Lenti and Frias. It points to D [REDACTED]'s directions to the officers and to Lee's failure to end the situation when he arrived on the scene at McKay's apartment. According to the Union, F [REDACTED] and I [REDACTED] did not commit any misconduct or fail in their professional responsibilities. It concludes that the discipline is not for just cause and should be reversed in its entirety.

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<sup>6</sup> Lee has challenged his discipline (Un. Exh. 3) but the record does not indicate what the outcome of that challenge was.



## V. Opinion

Article 14.8(2) of the collective bargaining agreement requires that the Sheriff have just cause to discipline its employees. Articles 14.8.2 and 11.3 allow recommended discipline to be grieved under the grievance arbitration process and submitted to final and binding arbitration.

The Sheriff bears the burden of proving that F████ and L████'s performance was deficient or that they committed some misconduct that justifies discipline. The Sheriff must also prove that the level of discipline imposed is justified, proportionate, and reasonable. *See*, Elkouri & Elkouri, "Discharge and Discipline" in How Arbitration Works, 7<sup>th</sup> Ed. (New York: Bloomberg BNA, 2016), pp. 15-23-24. *See also*, Antoine, Theodore, editor, The Common Law of Workplace, 2nd Ed. (Washington DC, 2005) at §6.9, p. 190. Fairweather's Practice and Procedure in Labor Arbitration (4<sup>th</sup> Ed. 1999) at pp. 273-275.

Sheriff's deputies charged with serving EOPs that involve child custody transfer custody have an incredibly difficult task. They must enter a domestic quarrel fraught with the rawest of emotions and deliver unwelcome, sometimes devastating news to one of the parties to that quarrel. It is often a thankless and gut-wrenching task. It is precisely for these reasons that the Sheriff should demand that EOPs be executed precisely with respect to and with empathy for the parties involved.

The Sheriff's Office has demonstrated that L████ and F████' performance was deficient with respect to the execution of the EOP but it has not sustained its burden with respect to the level of discipline issued. Consequently, I am granting the grievances in part, denying them in part, and modifying the level of discipline.

### A. The Sheriff has Just Cause to Discipline F████ and L████

In reviewing the record to determine if just cause exists, I have looked at two aspects of F████ and L████'s performance in this matter: (1) their responsibility for executing the EOP as an immediate return of minor rather than simply serving the EOP and informing him of his obligations to return the minor at 9:00 p.m. at the 14th District █████ station; and (2) the

appropriateness of their interactions with McKay, Rhodes, and B [REDACTED]. I find that cause for discipline is found in the former but not in the latter.<sup>7</sup>

*Execution of the EOP.* There is no question in my mind that something went terribly awry in the decision-making about how to approach this case and execute on the EOP. The EOP directed McKay to turn over B [REDACTED] to Heaton at 9:00 p.m. at the [REDACTED] Police Department station. Judge Ebersole took some effort to change that part of the order, presumably after some consideration. OPR correctly found that the Sheriff's role here was to serve the EOP on McKay and advise him of his obligations to deliver B [REDACTED] to Heaton at the 14th District. Yet I [REDACTED] and F [REDACTED] executed something entirely different and failed to properly advise McKay of what the order actually said and what his responsibilities were. I [REDACTED] and F [REDACTED] either did not read the order, read it and did not understand it, or read it and ignored it. Anyone of those failures constitutes a violation of Policy 101.5.5(af) and Procedure 500.

Procedure 500 says that supervisors shall sort and assign orders of protection. It also anticipates that officers to whom the EOP is assigned shall do due diligence before serving an EOP. At minimum that requires reading, understanding, and executing the EOP precisely as the court has directed.<sup>8</sup>

The consequences of F [REDACTED] and I [REDACTED]'s failure to do that in this case were significant. For nearly an hour, I [REDACTED] and F [REDACTED] struggled with McKay, Rhodes, and B [REDACTED] to execute something that the court did not order. McKay, who only learned of the EOP only a few minutes before, was compelled to comply with it under duress while handcuffed, and threatened with arrest and felony charges. B [REDACTED] was distraught at having to return to her mother as well as the predicament her father was in. I [REDACTED] and a CPD Officer told her that if she refused to go, her father would be arrested and charged with a felony. The episode was traumatic for McKay, Rhodes, and B [REDACTED].

Would things have been any different if F [REDACTED] and I [REDACTED] executed the EOP as the court intended? I think that they very well could have been. If I [REDACTED] and F [REDACTED] had simply delivered

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<sup>7</sup> McKay complained about how the officers conducted themselves during the incident but OPR made no clear finding that their conduct was at all inappropriate. Nevertheless, the Sheriff did argue at hearing that their manner during the encounter with McKay, Rhodes, and B [REDACTED] exacerbated the situation. Consequently, I feel it is important to consider it.

<sup>8</sup> Procedure 500 also imposes obligations on the supervisor to ensure that service of the EOP was properly completed.

the EOP to McKay and explained its contents at 7:00 p.m., McKay, Rhodes, and B [REDACTED] might have had time to digest the order, seek legal or other advice, and had the opportunity to comply by voluntarily making the transfer at the 14th District police station.<sup>9</sup> In that scenario, they would not have had to make quick uninformed decisions, McKay would not have been threatened with felony charges, he would not have been handcuffed, and he would not have had several squad cars in front of his home while this domestic drama played out in full view of his neighbors.<sup>10</sup> Perhaps most importantly, McKay would have had the opportunity to reassure B [REDACTED] and take steps to mitigate her distress. In short, the same result might have been obtained without the added trauma to this family had the court's order been executed as written.

Nevertheless, F [REDACTED] and L [REDACTED]'s performance failure here is mitigated by the fact that the record before me indicates that they were directed to execute the EOP as a return of minor by D [REDACTED], the sergeant-in-charge that night, who called them and told them to execute the return of minor as soon as possible. He even told them to reach out to Heaton to get a copy of the order. The body-worn camera footage shows that D [REDACTED] was engaged in the incident in the field. (Er. Exh. 4) The evidence before me indicates that it is the sergeant's duty to review EOPs, assign them, and prioritize them. Regrettably, neither D [REDACTED] nor Lee testified at the hearing, but the evidence the Sheriff offered from them indicates that it was Dragovich who received the EOP, reviewed it, and then directed F [REDACTED] and L [REDACTED] to execute a return of minor rather than simply as a service of an EOP. The sense one gets is that D [REDACTED] directed F [REDACTED] and L [REDACTED] based on a cursory reading of the EOP and no one thereafter took the time to read what the order actually said or to question D [REDACTED]'s direction. Consequently, there is a management fault, perhaps significant fault, in the missteps that occurred in the service of this EOP.

While management's role is a significant mitigating factor, it does not absolve F [REDACTED] and L [REDACTED] of their responsibility. Under Procedure 500, they had an independent duty to review

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<sup>9</sup>It is also true that they might have refused to comply, the police would have been sent to their home sometime after 9:00 p.m. that night and the scene that L [REDACTED] and F [REDACTED] lived through would have played out with different characters.

<sup>10</sup> The body-worn camera footage shows [REDACTED] postal employee delivering mail and several area residents walking by or through the area as the incidence was unfolding. (Exh. 4)

what the EOP required and, if necessary, to raise concerns about their assignment with D [REDACTED] which they did not do.

*L [REDACTED] and F [REDACTED]' Treatment of McKay, Rhodes and B [REDACTED]*. I do not find additional cause for discipline in F [REDACTED] and L [REDACTED]'s interactions with McKay, Rhodes, and B [REDACTED]. Any concerns about their interaction arise from the fact that the deputies were trying to compel the return of B [REDACTED] to Heaton rather than simply serve the EOP. I find it important that OPR did not fault the Deputies for their interactions with the family. While F [REDACTED] and L [REDACTED] could have been more patient and empathetic with McKay and Rhodes, and while they might have achieved a better result if they had given them accurate information on their rights and remedies<sup>11</sup>, the deputies were not physically or verbally abusive to them. The Deputies' physical interactions with McKay and Rhodes amounted to pulling McKay and Rhodes, who were resisting them. The taser display and oral warning were appropriate under the circumstances. L [REDACTED] and F [REDACTED] followed appropriate procedures under heated and emotional circumstances.

F [REDACTED] and L [REDACTED]'s performance fell short in executing this EOP as a return of minor rather than service of an EOP. In so doing, they violated Policy 101.5.5(af). The Sheriff has just cause to discipline them. Now I turn to the discipline that the Sheriff has proposed to implement.

**B. 29-day suspensions are not supported by principles of just cause.**

I find that the proposed penalty is discriminatory and disproportionate to the offense under the circumstances of this case. Moreover, it violates the principles of progressive discipline.

First, it is clear to me that there is management responsibility for the errors made in this case and that the managers involved have been treated much differently than F [REDACTED] and L [REDACTED], without justification. Indeed all fingers point toward D [REDACTED] as the person who made the initial mistake with respect to the EOP. But D [REDACTED] was never considered a subject of potential discipline by the Sheriff. He was interviewed in the OPR investigation as a witness and not as a potential subject of discipline. No discipline has been recommended for him. I find that perplexing and troubling. There was enough in the OPR materials that the Sheriff entered as

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<sup>11</sup>L [REDACTED] probably got off on the wrong foot with McKay by referring to his folder of papers, which McKay clearly deemed important, as "your little folder." L [REDACTED]'s attempt to explain the remedies available to McKay and B [REDACTED] did not help matters. But these are points for after-action reflections by L [REDACTED] and F [REDACTED] to optimize their future performance. They are not worthy of discipline.

evidence to at least consider whether D [REDACTED] should bear some responsibility for the missteps in the service of the EOP.

Lee, who came on the scene only after the bulk of the damage was done, was recommended for a 10-day suspension. While the record does not indicate that Lee knew anything about the contents of the EOP prior to getting a copy of it from Lenti at the scene and was not on the scene until well after things unfolded, he did have the ability to put things right when he arrived on the scene. That would have required him to stop what was happening, acknowledge a mistake by his office, and properly advise McKay on his responsibilities and the contents of the order. He did not do that.

Second, a 29-day suspension is an extreme penalty. Indeed, in most circumstances, it is the penultimate penalty prior to dismissal. It is a penalty that is generally reserved for employees who have extensive, recidivist disciplinary records or who have committed intentional and egregious misconduct. None of those characteristics are present here.

Third, there is no indication that the Sheriff has taken F [REDACTED] and I [REDACTED]'s disciplinary history into account so that the proposed disciplinary penalty is progressive as Article 14.8 of the collective bargaining agreement requires.

Given the foregoing, the 29-day suspensions for F [REDACTED] and I [REDACTED] are unreasonable and inappropriate. I have thought long and hard about whether *any* discipline should be imposed on F [REDACTED] and I [REDACTED] given that D [REDACTED] has not been disciplined or, based on the record before me, properly investigated. Arbitrators have often held that no discipline should be imposed when management bears responsibility for an incident. See Elkouri & Elkouri, "Discharge and Discipline" in How Arbitration Works, 7<sup>th</sup> Ed. (New York: Bloomberg BNA, 2016), pp. 15-80-81. See also, Brand, Norman, Editor, Discipline and Discharge in Arbitration (Chicago, IL: ABA, 1998) at pp. 396-397 (collecting cases). They have also left discipline undisturbed or only modified based on the nature of the infraction. (*Id.*)

I have concluded that given their duties under Procedure 500 and their duties to the public that they serve, F [REDACTED] and I [REDACTED] had a responsibility to ensure that the EOP was executed faithfully. Their failure to do that justifies discipline regardless of how the Sheriff has dealt with or will deal with D [REDACTED] and Lee in the future. The consequences to the McKay family were not *de minimis*. Forgoing discipline for F [REDACTED] and I [REDACTED] would defeat the remedial and

corrective purpose of discipline, which is ultimately to improve employee conduct and performance, in this case for the benefit of the public at large. Consequently, I find that discipline should be imposed but significantly reduced based on management's fault and on other factors that the Sheriff did not take into account in assessing the suspensions.

After considering those factors and taking into account the seriousness of F ■ and L ■'s performance deficiency, I find that the Sheriff should assess F ■ a 5-day unpaid suspension and L ■ a 5-day unpaid suspension.<sup>12</sup>

### AWARD

In light of the foregoing, I make the following award:

1. GR230324-BFHT and GR230324-HYPY are granted in part and denied in part.
2. The discipline is modified as follows:
  - a. F ■' discipline shall be reduced to a 5-day suspension.
  - b. L ■'s discipline shall be reduced to a 5-day suspension.
3. To the extent that L ■ and/or F ■ have suffered any loss as a result of the proposed suspensions, the Sheriff shall make them whole for such losses.<sup>13</sup>
4. I reserve jurisdiction over this matter for a period of 60 days from the date of this award.

Signed and issued this **23rd** day of **October 2023** at Chicago, Illinois:



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<sup>12</sup> ■ has no prior discipline. I have reviewed L ■'s prior discipline and concluded that it does not justify treating him differently than F ■s. That was not an easy conclusion but his most serious discipline is nine years old at this point and the most recent incidents do not appear to be serious. Moreover, Article 14.8 bars consideration of discipline that is over 18 months old provided it is not part of a pattern of conduct.

<sup>13</sup> As the suspensions have not been served, the record does not reveal any losses in pay at this point but it is not clear if there have been other consequences to them.