

Town of Steilacoom,
Employer,

and

Teamsters Local 117,
Union

ARBITRATOR'S OPINION AND AWARD

**PERC Case 138703-R-24
DISCIPLINARY GRIEVANCE
ARBITRATION**

Arbitrator: Donna E. Lurie

SENT ELECTRONICALLY TO PERC AND THE PARTIES:

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INTRODUCTION

This matter came before Arbitrator Donna Lurie upon the filing of a grievance and a subsequent Demand for Arbitration by Teamsters Local 117 (hereafter “Union”) regarding the termination of the Grievant by the Town of Steilacoom (hereafter “Town” or “Employer”) (Joint Exhibit 2). This arbitration is governed by the Collective Bargaining Agreement (CBA) that began on January 1, 2020 and remained in effect at the time of the incident and investigation (Joint Exhibit 1). The CBA governs the interactions between the Town of Steilacoom and Public Safety Teamsters Local 117 (Joint Exhibit 1). Law enforcement disciplinary actions are arbitrated under RCW 41.58.070. The Public Employment Relations Commission (PERC) assigned this case to Donna Lurie to serve as arbitrator. Both parties requested an in-person hearing. Evidentiary hearings were held on September 16 and 17, 2024 in Steilacoom, Washington. A third day of hearing was held on a Zoom videoconference platform on September 18, 2024. The Employer and the Union were each given a full opportunity to provide opening statements, introduce exhibits, examine and cross-examine sworn witnesses, and make arguments in support of their positions. A Lakeside Reporting court reporter was present throughout the hearing and provided an official transcript of all proceedings to Counsel and to the Arbitrator on October 7, 2024.

The parties agreed to the submission of 20 Joint Exhibits, including a dashboard camera recording of the August 19, 2023 wellness check and animal complaint check that was conducted by the Grievant. A transcript of the recording can be found embedded in Joint Exhibit 3 (investigation report). Counsel, witnesses, and the Arbitrator all viewed the dashcam recording at the arbitration hearing (Joint Exhibit 20). The Employer submitted 7 separate exhibits. The Union submitted 15 separate exhibits. In compliance with PERC expectations of privacy for the Grievant and witnesses, the Arbitrator will primarily use job titles and/or initials rather than the full names of people participating or mentioned in the arbitration hearing. One witness testified on behalf of the Employer – Police Chief TY. The Grievant (LW) was the only witness that testified on his behalf. Both parties introduced rebuttal testimony from the same witnesses. The Arbitrator notes that both parties were well-represented in this case.

The parties requested the opportunity to submit post-hearing briefs and supplementary caselaw. An official transcript was received by Counsel and the Arbitrator on October 7, 2024. The Hearing record was closed after receiving post-hearing briefs on November 8, 2024. The Arbitrator committed to a Decision and Award in 30 calendar days.

ISSUE STATEMENT AGREED BY THE PARTIES

Did the Town of Steilacoom have just cause to discipline the Grievant for violations of Police Department Policies 340.3.5 (Performance) and 344.2.5 (Miscellaneous Injuries) that occurred between August 19, 2023 and February 1, 2024? If so, was the level of discipline applied appropriate for those violations?

FACTUAL BACKGROUND

The Town of Steilacoom is a waterfront community in Pierce County, Washington. It is a small municipality with approximately 7,000 residents within about three-square miles. The Public Safety Department is comprised of twelve public safety officers. Uniformed personnel are represented by Teamsters Local 117. Grievant LW is a resident of the Town of Steilacoom, as well as a member of the Public Safety Department.

Grievant LW worked for the Steilacoom Department of Public Safety since 1990 and served his entire law enforcement career in the Town of Steilacoom. He became a Police Sergeant in 2012 and held the position of Sergeant at the time of his termination. Grievant LW achieved Executive Level Certification with the Washington State Criminal Justice Training Commission and shared that he completed “just about every training class that was offered” (Joint Exhibit 3; p.6). The Grievant was used by the Department as a field training officer to “introduce, train, and evaluate new hires to our processes and our way of doing business” (LW, Tr. 347-348). In 1999, Grievant LW became a Medical Services Officer. This position requires Emergency Medical Technician (EMT) training and coordination of training and licensing paperwork to support the Department’s Emergency Medical Services certification (Joint Exhibit 3, p. 56).

In August of 2023, Police Chief TY was physically absent from the police station due to a brief family vacation (TY, Tr. 21). Sergeant CB was the “acting Chief” for the time period in question, not Grievant LW (Employer Exhibit A; Joint Exhibit 3, p. 23). On the

evening of August 18, 2023, Grievant LW assisted two young officers in responding to a call regarding a train accident involving a young boy (LW, Tr. 171-172). The boy was playing on the tracks and was fatally struck by a train. The Grievant voluntarily assisted in the investigation and management of the situation. He contacted the Chaplain and the boy's parents. On August 19, 2023, the Chaplain contacted the Grievant and asked him to help the boy's family assist the boy's grandmother in obtaining necessary paperwork to renew her British passport to return for the funeral (LW, Tr. 173-174). Grievant LW visited the boy's parents to console them and talk with them about the passport issue. In subsequent conversations, Grievant LW shared how the boy's death distressed him and impacted him emotionally (Joint Exhibit 3, p. 42; LW, Tr. 283). He continued to relate the train accident to others in the days and weeks that followed (Joint Exhibit 3, pp. 42, 47).

Grievant LW received a call from the dispatcher on August 19, 2023 while he was visiting with the boy's parents. LW was told that the call involved a loose dog and a welfare check on a missing neighbor (LW, Tr. 175). DE had found a large pool of blood by the carport door and was worried about his neighbor WJ. The Grievant responded to the call, having worked 60 hours in the past five days and having four hours of sleep the night before (Joint Exhibit 20; Joint Exhibit 3, pp. 36,47; LW, Tr.172). He testified that he was overtaxed emotionally and physically exhausted (LW, Tr. 199; Joint Exhibit 3, p.12). Grievant LW twice exclaimed at the end of the dashcam recording that he wanted a day off (Joint Exhibit 20).

Grievant LW arrived at WJ's home at 12:34 pm to find WJ's dog running around outside WJ's home and menacing neighbors. The Grievant's visit to WJ's home was recorded on a dashcam that was mounted to his vehicle, and he wore a wireless microphone (LW, Tr. 179) (The Department did not have body cameras yet.). The Grievant was met by WJ's neighbor – DE. DE lived near the WJ house (Joint Exhibit 3, p. 17). Grievant LW and DE have been social friends for 5-6 years and shared the experience of attending their sons' baseball games (Joint Exhibit 3, pp. 7, 17; LW, Tr. 176). Grievant LW placed a leash on the dog and gave the leash to DE. The Grievant noticed that WJ's carport door was cracked open and a large pool of blood was in front of that door. He

called out for WJ, and WJ responded that he was hurt (Joint Exhibit 3, p. 37; LW, Tr. 183-184). WJ was laying on the ground behind the door. WJ had a large oozing tumor on his stomach. WJ was “white as a sheet” and could not move (LW, Tr. 185). Grievant LW described WJ as being “at death’s door” (Joint Exhibit 3, p. 8). WJ’s home was dilapidated and filled with garbage, refuse, and fecal matter (LW, Tr. 185). The roof had a large hole, and the home had no knobs or locks on the door. At first, Grievant LW was concerned that WJ had shot himself, so he asked WJ about his gun and whether the gun was secure. WJ told him that he was sick and he did not shoot himself (LW, Tr. 186-187). Grievant LW testified that he asked WJ what he wanted to do about his gun, but that question does not appear in the dashcam recording transcript. Grievant LW claimed that he recommended to WJ that DE store any guns for WJ, since WJ’s home was not secure (Joint Exhibit 3, pp.10,48). Again, that statement is not reflected in the dashcam recording transcript. There are no clear statements in the transcript that support explicit consent to transfer guns to DE. The Arbitrator took personal notes during the dashcam recording, and those notes show verbal consent for transfer of the dog. The notes do not show any verbal consent for transfer of firearms from WJ to anyone else. DE shared in his first interview that WJ did not ask him to take his dog, store his guns, or secure the residence (Joint Exhibit 3, p.18).

Fire Department medics had already been dispatched to the home. Grievant LW cleared the area for medics to enter. An ambulance arrived. Grievant LW told medics that WJ had “guns and stuff” (Joint Exhibit 3, p.38; Joint Exhibit 20; LW, Tr. 189). Ammunition boxes were stacked on the shelves. Grievant LW had WJ confirm his name and address for the medics (Joint Exhibit 3, p. 40). WJ gave verbal consent for DE to take care of his dog (Joint Exhibit 3, p. 39; Joint Exhibit 20). The medical crew took photos of WJ and sent them to the emergency room doctor. Medics loaded WJ into the ambulance and took him to a nearby hospital (St. Joe’s).

Grievant LW asked DE to take WJ’s dog, and DE refused (Joint Exhibit 3, p. 43; Joint Exhibit 20). The Grievant asked DE to secure the door of WJ’s cabin, since there was at least one gun in the home and the home was not secured (Joint Exhibit 3, p. 45; Joint Exhibit 20). DE agreed to drill a screw into the door frame to secure the door (Joint

Exhibit 3, p. 45). Grievant LW left WJ's home with the dog in his patrol car around 12:57 pm. The practice of the Public Safety Department was to take any unclaimed dogs to the Humane Society or animal control (LW, Tr. 195-196). Instead, the Grievant decided to take care of the dog until WJ recovered or he found a family member of WJ to take ownership. He mentioned that he had dealt with enough "hard things", loved dogs, and didn't want to take WJ's dog to be euthanized (LW, Tr. 196).

The CAD report shows that Grievant LW arrived at WJ's home at 12:34 pm on August 19, 2023 and he did not clear the call until 15:42 pm (**3:42 pm**) that day (Joint Exhibit 15). Grievant LW viewed the call as a medical aid call and did not consider the possibility that he needed to take WJ into protective custody (Joint Exhibit 3, pp. 10,16). WJ had willingly agreed to be transported to the hospital, he did not shoot himself, no crime was involved, and WJ did not appear to be suicidal (LW, Tr. 193).

Grievant LW called the hospital at 2:19 pm to check on WJ. LW was connected to WJ and they spoke for 32 minutes (Union Exhibit 3). There is no transcript of the call, so all we have is the Grievant's recollection of what he was told by WJ. According to the Grievant, WJ was worried about his dog and tried to give his dog to the Grievant (LW, Tr. 206). Grievant LW maintained that WJ was worried about his guns (LW, Tr. 206). Grievant LW testified that he (LW) worried about squatters or someone breaking into WJ's home (LW, Tr. 194, 207).

Grievant LW testified that he went to DE's home hours later on August 19 with WJ on the phone (Joint Exhibit 3, p.34). At first, DE told Investigator KT that he and Grievant LW did not return to WJ's cabin until around 6:00 pm (around dinnertime) on August 19, 2023 and were supposedly directed by WJ on the phone as to where to find his firearms (Joint Exhibit 3, p.34). DE stated that he heard what he thought was WJ's voice on speakerphone and was surprised to hear WJ sounding very coherent only a few hours after being taken to the hospital (Joint Exhibit 3, p.34). There is no record of a phone call around 6:00 pm on August 19, 2023 between WJ and Grievant LW (Union Exhibit 3). DE later told the Tacoma Police investigator that the Grievant returned to DE's home 2-3 hours after the wellness check (around 2:30 pm) with a voice that sounded like WJ on the phone (Employer Exhibit D, p.4). DE reported that he heard the Grievant ask WJ

if the firearms could be secured with DE and WJ supposedly said “yes” (Employer Exhibit D, pp. 4-5). Grievant LW’s timeline of events (prepared for the Loudermill hearing in January of 2024) described a second visit to the WJ home during the 2:19 pm telephone call to WJ (Union Exhibit 1). This phone call took place two hours after WJ was loaded into an ambulance and transported to the hospital. WJ supposedly directed LW and DE on where to find his firearms in WJ’s home (LW, Tr. 206-207). Grievant LW stated that he re-entered WJ’s home, gathered the firearms, gave them to DE, and DE took them in a wheelbarrow to his home to store in his gun safe.

Grievant LW closed out the dispatch call at 3:42 pm, writing “*subject tx to St. Joe’s...weapons secured by neighbor...dog secured...front door secured by neighbor*” (Joint Exhibit 15, p.3). Even though the dispatch call was closed, Grievant LW and DE returned to WJ’s home a week later (August 26), re-entered the home, and retrieved WJ’s ID cards and additional firearms (Employer Exhibit D, p. 5).

Grievant LW maintains that he had verbal consent from WJ to have his firearms stored in DE’s gun safe for safe keeping. No written “hold harmless” agreement was signed by WJ for the storage of his firearms. The serial numbers for each firearm were not recorded, and no incident report was filed with the Public Safety Department (LW, Tr. 294). No photographs were taken of the firearms that were recovered. The firearms were not confiscated, nor were they entered into evidence at the police station. Since LW did not feel that WJ’s home had been sufficiently secured, he could have brought the firearms to the police station (LW, Tr. 297). Instead, Grievant LW searched WJ’s home for the firearms, physically handed the firearms to neighbor DE, and DE loaded these firearms into a wheelbarrow (LW, Tr. 288). DE brought the firearms to his home near WJ’s house and placed WJ’s firearms in his personal gun safe (Joint Exhibit 3, pp.13, 34). Grievant LW and DE estimated that they recovered about 10-12 firearms during the second visit (Joint Exhibit 3, p.53) and another 10 firearms on a third visit (Joint Exhibit 3, p. 53). Grievant LW did not conduct a background check for DE being given the responsibility for storing multiple firearms belonging to WJ (Joint Exhibit 3, p.13), nor did he conduct a background check for WJ as owner of the firearms. Grievant LW did not feel a background check was necessary for anyone involved, even though

he did not know the circumstances of WJ's gun ownership. DE had told the Grievant a few years before that he possessed a concealed weapons permit (LW, Tr. 177).

Grievant LW viewed the removal and transfer of firearms as a "community caretaking" endeavor that did not violate RCW 9.41.113 (LW, Tr. 294; Joint Exhibit 19).

Grievant LW texted Sergeant CB as the Acting Chief at 3:48 pm (Union Exhibit 3). Recollections differ over what details were shared and which incident (train accident versus wellness check) was discussed during a seven-minute phone conversation at 3:50 pm on August 19, 2023 (Joint Exhibit 3, pp. 24-25). The phone call with CB at 3:50 pm took place *after* the Grievant had closed out the dispatch call at 3:42 pm (involving the wellness check at WJ's home) (see Union Exhibit 3).

Grievant LW contacted Code Enforcement at 5:21 pm on August 20 to ask them to condemn WJ's home as uninhabitable and issue an Order to Abate several building code violations (Union Exhibit 4). An Order to Abate was issued on August 22, 2023 and the home was "red tagged" for no entry. "Red tagging" meant that no one was to enter an unsafe residence unless they were investigating a crime or had the explicit consent of the owner (TY, Tr. 59, 141).

Between August 21 and August 25, 2023, Grievant LW staffed the Law Enforcement Youth Camp. This is an overnight camp for disadvantaged youth to enjoy a camping experience and have positive interactions with law enforcement officers (LW, Tr. 166-168). During this week, Grievant LW returned to the police station to attend a Critical Incident Stress Debriefing on August 23, 2023 to debrief the train accident. While at the station, Grievant LW volunteered information to his colleagues about the WJ wellness check. LW informed them that he climbed into a house and transferred several wheelbarrows full of firearms to a neighbor (Joint Exhibit 3, pp. 25, 26, 30-31; LW, Tr. 230).

Grievant LW had phone conversations and texts with Chief TY on August 19, 20, 21, and August 22. Chief TY testified that the August 20 phone conversation focused on the train accident and the need for the grandmother's passport to be renewed (TY, Tr. 371-372; Employer Exhibit G). Chief TY testified that he was made aware of WJ's dog on August 22 – TY was told that WJ's home had been condemned and Grievant LW was

unable to find a caretaker for the dog (TY, Tr. 24-25, 372). Grievant LW was trying to prevent euthanasia of the dog, so Chief TY instructed the Grievant to obtain a signed written release (TY, Tr. 24-26). Grievant LW wrote a “hold harmless” agreement, visited WJ at the hospital, and had WJ sign the agreement for the care of WJ’s dog (Union Exhibit 5). The document is dated and signed on August 26 (Union Exhibit 5), the day of the Grievant’s visit to WJ at the hospital. Chief TY maintains that Grievant LW made no mention of any firearms during his phone conversations and his text messages with the Chief on August 19, 20 and August 22 (TY, Tr. 26, 372, 378-379; Employer Exhibit G). Grievant LW hedged in his responses when he stated that “I feel I told him that there were guns” and claimed that they had a bad connection during their telephone calls (Joint Exhibit 3, p. 12). When asked about the content of the conversations, Grievant LW replied, “I don’t have a distinct memory of what was spoken about.”(LW, Tr. 217).

Three days later, Chief TY received an email citing concerns over Grievant LW allegedly “stealing” a dog and unlawfully transferring weapons to a neighbor (Employer Exhibit B). Chief TY reviewed the log of dispatch calls (Joint Exhibit 15) and RCW 9.41.113 (Joint Exhibit 19; TY, Tr. 373-374) to determine whether the allegations had any merit. Chief TY discovered LW’s entry that referred to weapons when he closed out the call (Joint Exhibit 15). Employer Exhibit B was the first mention to Chief TY of firearms being involved in the August 19 wellness check (TY, Tr. 85, 372-373).

On Saturday, August 26, 2023 Grievant LW was off-duty and voluntarily visited WJ in the cancer ward of the hospital. WJ signed the handwritten hold harmless statement and consent for transfer of his dog to Grievant LW (Union Exhibit 5). The statement does not mention any consent for the transfer of firearms. Grievant LW testified that WJ asked the Grievant to return to WJ’s home on August 26 to retrieve WJ’s driver license and Veterans Administration (VA) card. Grievant LW purchased a wallet, underwear, pajamas, and socks with his own money for WJ to use in the hospital. Grievant LW maintains that WJ requested that he and DE enter the home a third time on August 26 to retrieve any remaining firearms. By this time, WJ’s home had been condemned and no one was supposed to enter the dwelling (TY, Tr. 66-67). No written record was made of explicit consent by WJ to enter his “red tagged” home (TY, Tr. 67). Grievant LW

removed the screws on the door, re-entered the home, found the ID cards, and retrieved another wheelbarrow full of firearms. He gave the firearms to DE to store in his gun safe for safe keeping. At some point in time, Grievant LW compiled a handwritten list of firearms and provided that list to Investigator KT (Joint Exhibit 3, p. 9). It is unclear what descriptions were provided and whether all of the firearms were noted on the list.

Grievant LW took it upon himself to contact WJ's estranged wife (SJ) on August 28 to find a place for WJ to live after his hospital stay. SJ sent an email to the Grievant asking for his help in the sale of WJ's home (Union Exhibit 6). Grievant LW declined and referred SJ to a local real estate firm that he hoped to affiliate with in the future (Joint Exhibit 3, p. 15). While a colleague thought that Grievant LW mentioned a referral fee (Joint Exhibit 3, p. 32), the local realtor verified that Grievant LW has never taken a referral fee from him for referring potential clients (Joint Exhibit 3, p. 36). Grievant LW has declined a meal or a cup of coffee as payment (Joint Exhibit 3, p.36). Grievant LW reached out to a Federal Firearms Licensed Dealer that he knew in the area to let him know that SJ may be contacting him to sell WJ's guns (Joint Exhibit 3, p. 14). Grievant LW maintained that he would not profit from the sale of the home, sale of any firearms, or any other interactions with WJ (Joint Exhibit 3, pp.14-15).

Chief TY returned from his vacation and met face-to-face with Grievant LW on August 29, 2023 (LW, Tr. 232). Chief TY was surprised to learn of the presence and retrieval of firearms in WJ's home through an email sent to him by another Department member (LW, Tr. 314; Employer Exhibit B). Grievant LW confirmed to the Chief that he had retrieved firearms from WJ's home and transferred them to DE to store in his gun safe while WJ was in the hospital (LW, Tr. 314-315; TY, Tr. 375-376). Grievant LW offered to write an incident report on August 29, 2023 (10 days after the incident) (LW, Tr. 232-233). Chief TY told the Grievant not to bother writing a report at this late date (Ty, Tr. 89-90, 376-377). Chief TY was concerned that a late report could taint the integrity of the investigation and offer conflicting narratives (TY, Tr. 89-90, 376-377).

On August 30, Grievant LW received a letter advising him that he was under investigation for violation of department policies and procedures (Joint Exhibit 8). In order to minimize any delay, the Department hired an outside third party (Public Safety

Testing Investigations) to conduct the investigation (TY, Tr. 36). Investigator KT was a former Chief of two police departments, has 34 years of experience in public safety, and serves as an expert witness on police management practices (Joint Exhibit 3, p. 71). The purpose of the investigation was to find out what happened when Grievant LW responded to the dispatch call to investigate WJ's situation (TY, Tr. 39). The Chief would review the findings of the investigation and determine if any policies had been violated (TY, Tr. 39).

Chief TY instructed Grievant LW to "not discuss this matter [the investigation] with any town employees or other persons other than allowed by law" (Joint Exhibit 8). Shortly afterwards, the Grievant contacted SJ (WJ's estranged wife), DE (WJ's neighbor), and [REDACTED] (WJ's sister) to inform them that he was under investigation (Union Exhibit 1).

Chief TY left for training at the FBI National Academy on September 24, 2023 (TY, Tr. 40). LW and CB rotated acting chief duties. The Chief was available for consultation by telephone. Chief TY was physically absent from the station for 10-11 weeks (TY, Tr. 41).

On October 3, 2023 Chief TY received information that an anonymous complaint had been sent to the Washington State Criminal Justice Training Commission regarding Grievant LW. The complaint accused Grievant LW of performing illegal firearms transfers and seeking to profit from the sale of these firearms (Employer Exhibit E). In addition, Grievant LW was accused of convincing WJ to sell his house and have the Grievant conduct the sale (Employer Exhibit E). Due to the criminal nature of the allegations, Chief TY contracted with the Tacoma Police Department to conduct a second investigation to determine if any crimes were committed regarding the transfer of firearms (Employer Exhibit D). The criminal investigation was completed on December 19, 2023 and concluded that there was no evidence to support criminal charges. The allegations that Grievant LW attempted to steal or legally sell the firearms in question, steal a dog, and sell a residence were unfounded (Employer Exhibit D, p. 6-7). The criminal investigation did not involve a review of Department policies or procedures to determine whether any policies were violated (Employer Exhibit D, p. 6).

On November 1, 2023 Chief TY received another complaint accusing Grievant LW of improperly altering paperwork that was required to renew the Department's Emergency Medical Services certification. The complaint alleged that Grievant LW took an outdated insurance letter, redacted the date on the letter, and sent the undated letter to support a renewal of State certification for Emergency Medical Services (Joint Exhibit 3, pp. 2, 55-56). Grievant LW shared that there was talk of potential termination to the emergency services program. Chief TY told Grievant LW to begin the insurance application process to meet the September 30 deadline (Joint Exhibit 3, p.57). Grievant LW had requested an updated WCIA letter from the Town Manager, but he had not received the letter yet. The previous insurance letter was used as a placeholder until the updated letter was received from the Town Manager (Joint Exhibit 3, p. 57-58). Electronic copies of the application and paperwork were sent to the Health Services Consultant in the Department of Health. That individual authorized Grievant LW to file the hard copies for the application (Joint Exhibit 3, pp. 57-58). An updated WCIA insurance letter was received from the Town Manager on September 21, 2023. Chief TY directed Grievant LW to send in the updated letter, but Grievant LW forgot to send it to the Washington Department of Health (Joint Exhibit 3, p. 58). As of the day of the third interview (November 29, 2023), Grievant LW had never submitted the updated WCIA insurance letter to the Department of Health (Joint Exhibit 3, p. 58).

Notice of a complaint was received on October 23, 2023 that accused Chief TY of engaging in a coverup and not fully investigating or addressing Grievant LW's alleged department policy violations (Union Exhibits 7 and 9). The complaint accused the Chief of being reluctant to investigate a friend. The Chief responded that the Department would follow their process and not be pushed by the complaints (TY, Tr. 103; Union Exhibit 10). Grievant LW was not placed on administrative leave until November 18, 2023 (Joint Exhibit 8, p. 2 of November 18 Memorandum).

An administrative investigation of potential Department policy violations was conducted by Investigator KT. Grievant LW was interviewed three times, accompanied by a Union representative, to clarify his testimony and address discrepancies in his description of his activities during and after the events in question. Chief TY confirmed that there were

several discrepancies in the information shared by LW and DE (TY, Tr. 55-56). Since no incident report, no written records, and no timeline had been prepared, Grievant LW was forced to rely on his memory. As shared by Grievant LW, his recollection was a “jumbled up mess” (Joint 3, p.8). A video dashcam recording of the wellness check was available the entire time that Grievant LW was employed from the start of the investigation on August 30, 2023 and throughout his administrative leave. The Union formally requested the recording in September, 2024, and it was provided one week prior to the arbitration hearing. Investigator KT was able to view the recording on October 11, 2023 (Joint Exhibit 3, p.33). This recording covered the initial house call – it did not cover Grievant LW’s subsequent visits to the WJ home on August 19 and August 26, nor did this recording cover subsequent conversations between Grievant LW and other persons involved in assisting WJ or transferring his possessions. The audio file lasted approximately 20 minutes (Joint Exhibit 20). The ability to hear all of the statements in the dashcam recording was mixed, depending on where Grievant LW and other speakers stood on WJ’s property during the recording.

Neighbor DE was interviewed twice during the investigation. DE stated that either Grievant LW asked him to take the guns from WJ’s home or DE offered to store the guns as a good neighbor (Joint Exhibit 3, p.18). Grievant LW “did all the digging” in WJ’s home, gathered the guns, and handed them to DE at the entrance (Joint Exhibit 3, pp.18-19). DE placed the firearms in a wheelbarrow and took them to his gun safe in his house. DE shared that he planned to store the guns until the owner told him what to do with them. Nothing was said about this being a “temporary transfer” as provided under RCW 9.41.113. DE said that he was not familiar with the Firearms dealer named by the investigator and that he had not been part of any discussion to dispose of WJ’s guns through a dealer (Joint Exhibit 3, p.19). Shortly before DE’s interview in September of 2023, SJ called DE to tell him that WJ had died and that she would like to visit DE’s home to see WJ’s guns and figure out what to do with them (Joint Exhibit 3, p.19). The firearms dealer told Investigator KT that both DE and Grievant LW had contacted him regarding a potential sale of firearms soon after WJ died (Joint Exhibit 3, p.54).

DE told Investigator KT that he spoke with Grievant LW during the week of DE's interview and that they planned to go out to dinner (Joint Exhibit 3, p. 20). DE and the Grievant were social friends and spoke by phone once or twice per month (Joint Exhibit 3, p. 20). Grievant LW told DE that SJ was coming to the Grievant's home for coffee and to meet in person (Joint Exhibit 3, p.20).

SJ told Investigator KT that she spoke with the Grievant "on and off" and learned that WJ had quite a few guns in the home (Joint Exhibit 3, p.20). SJ shared that she spoke with the Grievant the week before her interview (Joint Exhibit 3, pp.20,35). *SJ was told by the Grievant that WJ had asked him to give his guns to DE for safekeeping (Joint Exhibit 3, p.20). SJ confirmed that WJ told her (timing unknown) that he offered to give his guns to the Grievant, but the Grievant responded that he did not want the guns (Joint Exhibit 3, p. 22). The Firearms dealer was suggested to SJ by either DE or the Grievant if she wanted to sell the guns (Joint Exhibit 3, p.23).* According to the Tacoma Police investigation, it was SJ's "understanding that WJ had asked the Grievant to secure his firearms with his neighbor DE while he was in the hospital" (Employer Exhibit D, p. 4). SJ did not share how she came to that understanding.

Both SJ and WJ asked Grievant LW to sell WJ's house, but the Grievant declined and referred them to a real estate broker in the area (Joint Exhibit 3, p. 23; Union Exhibit 6). SJ had met with Grievant LW in-person just a few days before her interview (Joint Exhibit 3, p.23). They talked about the dog, WJ, the house, and *that there was an ongoing investigation* (Joint Exhibit 3, pp.23,35). Grievant LW talked about what he did as a police officer and how he approached his job (Joint Exhibit 3, p.35). *He told SJ that he "loved his work and he loved being able to help people"* (Joint Exhibit 3, p. 35). SJ did not pay anything to Grievant LW for veterinarian bills or anything else (Joint Exhibit 3, p.23). Grievant LW shared with SJ that he was *being investigated for not booking WJ before taking him to the hospital* (Joint Exhibit 3, p. 35).

Sergeant CB told Investigator KT that Grievant LW focused on the disarray and horrible living conditions in WJ's house in their sergeant-to-sergeant pass-through conversation on August 25 (Joint Exhibit 3, p. 24). CB did not remember LW describing the wellness check during the August 19 phone call (Joint Exhibit 3, p. 24). Grievant LW's description

of the wellness check was very confusing. Grievant LW's discussion of blood on the ground and WJ's "guts hanging out" made it sound like WJ had died (Joint Exhibit 3, p.24). CB confirmed that the Department held a critical incident debrief on August 23, 2023 to discuss the train accident. Most of the staff were in attendance. Grievant LW volunteered information about the wellness check and shared with colleagues that he had climbed into a house and removed several wheelbarrows of firearms from the home and taken them to a neighbor's house (Joint Exhibit 3, pp.25, 30). His colleagues were alarmed by this information. One staff member, concerned about the removal of the dog and the transfer of firearms, sent an email to the Chief (Employer Exhibit B).

Investigator KT concluded that Grievant LW arrived at WJ's home at 12:34 on August 19, 2023. Grievant LW estimated that he spent approximately 40 minutes at the WJ residence (Joint Exhibit 3, p. 60), but the dashcam video ended around 12:57 pm (Joint Exhibit 20; Employer Exhibit D, p. 6). Grievant LW claimed to have removed 5-10 guns during his initial visit to WJ's home (Joint Exhibit 3, pp. 8-9), but the dashcam video of the initial home visit did not show any firearms being removed during that initial visit (Joint Exhibit 20). Grievant LW cleared the dispatch call at 1542 hours (**3:42 pm**) on August 19 with these notes – "*subject taken to St. Joe's [hospital], weapons secured by neighbor, dog secured, front door secured by neighbor*" (Joint Exhibit 3, p. 59 citing Joint Exhibit 15, p.3). These statements conflicted with information provided by DE and the Grievant regarding their second entry of the WJ home at approximately 6:00 pm on August 19, 2023 (Joint Exhibit 3, p. 60). There was a discrepancy between the statements from DE and Grievant LW of having WJ on speakerphone directing them on where to find multiple firearms versus the lack of cell phone records to corroborate a call between WJ and Grievant LW around 6:00 pm. The Grievant's cell phone records show one call to St. Joe's Hospital at 2:19 pm for 32 minutes at the number 253-426-6963 on August 19, 2023 (Union Exhibit 3). That telephone number does not appear again on August 19, nor does this number appear again during WJ's two-week stay at the hospital (Union Exhibit 3). The Arbitrator notes that it took two weeks for hospital staff to stabilize WJ's medical condition. There was a 10-minute call from Dispatch at 5:16 pm, a 1-minute call at 6:32 pm, and a 23-minute call with the Grievant's wife at 6:15 pm on

August 19 (Union Exhibit 3). A follow-up call was made by Grievant LW to DE for 11 minutes at 10:45 am on August 20, 2023 (Union Exhibit 3). In addition, there is a discrepancy between the information provided by DE to the Tacoma Police Department versus the information provided to Investigator KT – a second visit made 2 or 3 hours after the wellness check versus a second visit made around 6:00 pm on August 19. The Tacoma Police later visited DE's home and counted 16 rifles and pistols in the gun safe (Employer Exhibit D, p. 5).

Investigator KT opined that the initial response to WJ's home was a medical aid call and did not fit the criteria for an "emergency detention" under Policy 417.7 (Joint Exhibit 3, p. 64). A careful review of the audio recording reveals that WJ clearly consented to being transported to the hospital (Joint Exhibit 20). WJ verbally consented to having DE or LW take custody of his dog to avoid having the dog killed by animal control (*Ibid.*).

Investigator KT noted that no warrant was sought before seizing the firearms. LW made no documentation of the second and third visits to WJ's home (Joint Exhibit 3, p. 64). Investigator KT noted that Policy 344 covered report preparation and that a written report could have documented sufficient information to refresh the Grievant's memory and assist with any follow-up investigation and/or prosecution (Joint Exhibit 3, p. 65). The lack of proper documentation resulted in conflicting statements and confusion over the sequence of events. Investigator KT concluded that "a reasonable police officer and supervisor would recognize the need to document an entry into a private residence and the recovery and transfer of firearms to a neighbor" (Joint Exhibit 3, p. 65). Investigator KT opined that the seriousness of WJ's medical condition and the presence of blood near his door added to the necessity of a police report (Joint Exhibit 3, p. 65).

Investigator KT asked Grievant LW how WJ would know how many guns had been retrieved on August 19 and that there were more guns to retrieve on August 26, since WJ was in the hospital during this period. LW responded that he had no idea (Joint Exhibit 3, p. 11).

Under Policy 344.2, Investigator KT referred to Grievant LW's 30+ years of experience and Executive Level training certification to express surprise at the decision not to

complete a police report. Grievant LW did not conduct a criminal background check to verify that DE was eligible to receive 16-20 firearms that belonged to WJ. Due to the death of WJ, Investigator KT had no way to corroborate the assertion that WJ had authorized subsequent entries into the WJ home and the transfer of firearms.

Under Policy 340.1.2, Investigator KT noted that Chief TY and Sergeant CB both stated that Grievant LW did not inform them of the removal of firearms during their initial telephone conversations. In his testimony at the arbitration hearing, Grievant LW accused both Chief TY and Sergeant CB of lying about their conversations with LW and the timing of when they learned about the transfer of firearms (LW, Tr. 303, 340).

Under Policy 340.1.4 and RCW 9.41.113, Investigator KT concluded that Grievant LW could not verify that WJ gave consent to him to remove and transfer his firearms to neighbor DE. A “hold harmless” agreement was signed for transfer of the dog, but no mention was made regarding the transfer of firearms (Union Exhibit 5).

Under Policy 340.3.5, Investigator KT concluded that Grievant LW failed to follow the Chief’s instructions and KT’s reminder not to discuss the investigation. Grievant LW engaged in multiple personal conversations and/or social gatherings with DE, SJ, and the sister of WJ after receiving the Chief’s directive and KT’s reminder.

Investigator KT concluded that Grievant LW engaged in falsification of work-related records when he redacted the date on an insurance document to support the Department’s Emergency Medical Services renewal application. The Arbitrator notes that the Grievant removed a date and did not place a false date on the paperwork.

Following the conclusion of the investigation, Chief TY issued a Loudermill Notice that outlined violations of several Department policies and proposed disciplinary sanctions (Joint Exhibit 4) (Department policies are found in Joint Exhibit 17).

- For Policy 417.9, a separate criminal investigation by the Tacoma Police Department indicated that removal and transfer of the firearms did not constitute a crime and did not subject the firearms to seizure by law enforcement.

- For the redaction of the date on the insurance document, the Chief proposed verbal counseling. The Chief noted an updated document was not sent to the Department of Health, contrary to the Chief's orders.
- For the failure to complete an incident report of the response to the WJ call, the Chief proposed a 30-day suspension without pay.
- For failure to advise an assigned supervisor before, or immediately after, multiple trips to a residence to transfer a significant number of firearms that created liability for the Department, the Chief proposed a reduction in rank.
- For disobeying directives not to discuss the investigation with people other than those allowed by law (e.g. union representative, attorney), the Chief proposed termination.
- For a significant number of variations and discrepancies in testimony, combined with the judgment call to not consult with a supervisor and to not complete an incident report, the Chief proposed termination.

A Loudermill hearing was held on January 29, 2024. A letter of final discipline and notice of termination was issued on February 1, 2024 (Joint Exhibit 5). The Union filed a grievance on February 13, 2024 (Joint Exhibit 2). The parties were unable to resolve the grievance, and the Union filed a demand for arbitration. Under RCW 41.58.070, this grievance was assigned to Donna Lurie to serve as arbitrator in this matter.

APPLICABLE CONTRACT SECTIONS

ARTICLE 1 – Management Rights

...the Union and its members recognize that management has the exclusive right to manage and direct all of the Town's operations. Accordingly, the Town specifically, except as otherwise limited by this Collective Bargaining Agreement, reserves the exclusive right to:

- (1) Decide the scope of service to be performed and the method of service;
- (2) Hire, promote and transfer employees, terminate, demote, suspend or otherwise discipline employees for just and proper cause, layoff, and determine the qualifications of employees;
- (3) Rehire employees...

- (9) Formulate and revise rules and regulations, provided same are not inconsistent with this Collective Bargaining Agreement...

ARTICLE 6 – Discipline and Discharge

- 6.1 Employees shall be disciplined for just cause... Disciplinary action may include written reprimand, suspension without pay, reduction in rank, or discharge.
- 6.2 Prior to the imposition of discipline, the employee shall be provided with a copy of the alleged violation and all documents related to the alleged violation Management has in its possession. Management shall hold a pre-disciplinary meeting with the employee. At this meeting, the employee shall be given the opportunity to respond to the alleged violation...

6.4 Disciplinary Interviews Procedure

Any employee who will be interviewed concerning an act which, if proven, could reasonably result in disciplinary action against them, will be afforded the following safeguards:

- (1) The employee will be informed, in writing, and a copy provided the Union, at least 72 hours prior to the interview if the Department believes the employee is a suspect in the investigation.
- (2) At the time of the notice in (1) above, the employee will be informed, in writing, of the nature of the investigation and the specific allegations, policies, procedures and/or laws which form the basis for the investigation.
- (3) The employee, upon request, shall be allowed the right to have a union representative present during the interview...
- (6) The employee will be required to truthfully answer any questions involving non-criminal matters under investigation and will be afforded all rights and privileges to which they are entitled under the laws of the State of Washington or the United States of America...
- (11) The employee and the Union shall be advised, in writing, of the results of the investigation and any future action to be taken on the incident...

ARTICLE 8 – Grievance Procedure

Step 5 – Arbitration

The arbitrator shall render a written decision... within 30 calendar days of the hearing; which decision shall be final and binding on both parties. The arbitrator shall have no power to alter, amend or change the terms of this Collective Bargaining Agreement. The arbitrator shall retain jurisdiction of the matter until the decision of the arbitrator is implemented...

Relevant Excerpts of Joint Exhibit 1

DISCUSSION

Rather than apply a mechanical rendering of the seven elements of just cause, this Arbitrator focuses on the elements most germane to the situation in question. Regardless of the elements discussed, the Employer bears the burden of proof both with respect to proving the alleged policy violations and demonstrating the appropriateness of the penalties imposed. Elkouri and Elkouri, *How Arbitration Works*, 8th edition, citing *Pepsi-Cola Co.*, 104 LA 1141 (1995).

I. DID THE EMPLOYER CONDUCT A FULL AND FAIR INVESTIGATION OF THE ALLEGED POLICY VIOLATIONS?

Grievant LW received notice on August 30, 2023 that he would be the subject of an administrative investigation into allegations of workplace misconduct (Joint Exhibit 8). A written summary of the allegations and Department policies were provided in the notice (Joint Exhibit 8). Evidence showed that the Grievant had clear notice of the allegations of misconduct. Grievant LW was directed not to “discuss any of these matters with any employees or other persons other than those as allowed by law” (Joint Exhibit 8). Investigator KT reminded Grievant LW of his responsibility to maintain confidentiality and not jeopardize the integrity of the investigation.

The administrative investigation was conducted by an impartial third party – Public Safety Testing Investigations. Investigator KT is a former Police Chief of two police departments and has 34 years of public safety experience (Joint Exhibit 3, p. 71). Investigator KT has conducted numerous workplace misconduct investigations and serves as an expert in police management practices (*Ibid.*) After careful review of the people selected to be interviewed, the initial and follow-up questions asked, and the 71-page report compiled by Investigator KT, the Arbitrator concludes that the investigation was conducted in a fair, thorough, and competent manner. The Investigator amassed 300 pages of additional evidence that was shared with Chief TY (TY, Tr. 42). Investigative questions were appropriate and interviews were not rushed. Investigator KT did not display bias in his questions and in recording witness responses. Some of the damning pieces of information (such as communications

with other witnesses and assertions of phone calls that did not exist) were volunteered by Grievant LW. Grievant LW did not request any additional witnesses to be interviewed, nor did he request that Investigator KT pursue additional lines of inquiry to support the Grievant's perspective.

The Union argues that Grievant LW had inadequate time to prepare for the investigatory interviews. In reviewing the evidence, the Arbitrator finds that Grievant LW had ample time to prepare for his first interview between August 30 and October 4, 2023. As the Town pointed out, the dashcam recording was available for the Union and Grievant LW to view throughout his employment and his administrative leave. The Grievant was not placed on administrative leave until November 18, 2023. Grievant LW was aware that he was being recorded on the dashcam and could have reviewed the recording on his own (LW, Tr. 318, 333-334; TY, Tr. 110) . The Union representative could have requested a copy of the dashcam recording at any time after the Union was informed of the administrative investigation on August 30, 2023, during the Loudermill hearing (January 29, 2024), and during the months between the final discipline notice (February 1, 2024) and the arbitration hearing on September 16-18, 2024. The Union did not request a copy of the dashcam recording until shortly before the arbitration hearing.

The Union argues that the lack of an official report filed by Grievant LW hampered him in responding to investigatory questions. The Union representative sat in on the interviews with Grievant LW and could see that his responses were jumbled. The Grievant could have developed his timeline of events at any time after his meeting with Chief TY on August 29, 2023 to assist in recalling the sequence of actions that he took to respond to the WJ wellness check. The lack of an official report did not stop Grievant LW from developing his own timeline of events and organizing his thoughts. Chief TY was concerned that a late report (10 days after the incident) could taint the integrity of the investigation and offer conflicting narratives (TY, Tr. 89-90, 376-377). The Union argues that the accusation against the Chief for “covering up a crime” pressured the Chief. This accusation was not made until October 19, 2023 (Union Exhibit 9). The Arbitrator concludes that Chief TY decided to commence

an administrative investigation long before any accusations were made regarding favoritism towards a Department veteran and friend.

The Union argues that the Department should have proactively provided Grievant LW with a copy of the dashcam recording at the time that he was placed on administrative leave. The Grievant acknowledged that he could have requested the dashcam recording at any time, but he assumed that a recording did not exist.

Grievant LW was interviewed a second time on October 31, 2023 (*27 days later*) and a third time on November 29, 2023 (*one month later*) (Joint Exhibit 3, p. 4). The Grievant had ample time to prepare for each of these interviews. It is evident that Grievant LW chose not to take this investigation seriously. The Grievant acknowledged at the arbitration hearing that he did not spend time preparing for any of his three interviews with Investigator KT (LW, Tr. 170, 298-300).

On November 18, 2023 Grievant LW received written notice of a second investigation by the Tacoma Police Department for allegations of criminal conduct (Joint Exhibit 8). Grievant LW was again directed not to discuss “these matters” with any employees or other persons “other than allowed by law” (*Ibid*).

Review of Chief TY’s testimony reveals that the Chief took a few weeks to carefully review Investigator KT’s report, interview transcripts, the Department policies, and the Tacoma Police Department report before issuing a Loudermill notice on January 4, 2024 (Joint Exhibit 4; TY, Tr. 46-47). Grievant LW and his Union representative were given 25 days to prepare for the Loudermill hearing on January 29, 2024 (Joint Exhibit 5). An audio file and transcript was prepared from the Loudermill hearing (Joint Exhibit 18). The Chief reviewed the evidence and arguments provided at the Loudermill hearing, including the newly submitted timeline by LW, before issuing a notice of final discipline on February 1, 2024 (Joint Exhibit 5).

The Union argues that certain members of the Department engaged in an orchestrated attempt to influence the outcome of the investigation by filing complaints and public records requests about the Grievant’s conduct. Grievant LW acknowledged that he shared details of his response to the WJ wellness check with

Department colleagues on August 23, 2023 (Joint Exhibit 3, pp. 30-32). Colleagues were shocked to hear that the Grievant transferred a wheelbarrow full of firearms to a friend and neighbor without any written record of the firearms taken, without police department oversight, and without clear owner consent provided (Joint Exhibit 3, pp. 26, 30-32). Given Grievant LW's well-known personal activities as a real estate agent with many personal connections to various businesses in the area, some of his colleagues made assumptions that he had crossed the line between personal and professional business (Joint Exhibit 3, p. 32). These assumptions of personal dealing for personal financial benefit were inaccurate.

Based on the weight of the evidence presented, the Arbitrator finds that the Town received the results of full and fair investigations of allegations of workplace misconduct and criminal activity (Joint Exhibit 3; Employer Exhibit D).

II. DID THE TOWN OF STEILACOOM HAVE JUST CAUSE TO DISCIPLINE THE GRIEVANT FOR VIOLATIONS OF POLICY 340.3.5?

A copy of Department Policy 340.3.5 can be found in Joint Exhibit 17. This section covers a wide variety of performance concerns. In reviewing the evidence presented, the Arbitrator concludes that the charge of falsification of an insurance letter is not supported by the evidence. The Grievant was instructed to move forward with an application to renew Emergency Medical Services certification, even though he did not have an updated letter from the Town Manager (Joint Exhibit 3, pp. 57-58). More importantly, the contact person at the Department of Health reviewed electronic copies of the paperwork and told Grievant LW to go ahead and file hard copies (*Ibid*). The date of the letter was redacted. A false date was not added (*Ibid*). While the redaction of a date was unwise, it did not rise to the level of falsification of a record with the intent to engage in deception. Chief TY agreed that the Grievant did not commit forgery (TY, Tr. 124). Based on the weight of the evidence, the Arbitrator finds that the Town did not meet the burden of proof for this alleged workplace violation.

Grievant LW is charged with engaging in improper conduct on-duty and off-duty that reflects unfavorably on the Department (Joint Exhibit 5; Joint Exhibit 17). The Town

presented uncontroverted evidence that Grievant LW unsecured a door and entered a condemned property on August 26, 2023 without the written and explicit consent of the owner of the property (Joint Exhibit 3, p. 29). The Union argues that Grievant LW was engaged in community safekeeping for a person who was incapacitated and unable to secure his home. The Union cites the Tacoma Police investigative report for support of its position (Employer Exhibit D). The Arbitrator notes that conduct can violate Department policies and procedures, even when that conduct is not deemed to be criminal in nature.

Grievant LW entered a vacant home, without written authorization and owner consent, to retrieve firearms and give them to a neighbor to store in his gun safe. The Grievant testified that he did not have WJ's consent for the police to retrieve and store the firearms (LW, Tr. 335-336). If he lacked consent for police retrieval of the firearms, then the Grievant also lacked consent to retrieve and transfer the firearms to neighbor DE.

The Grievant reported WJ's house as "secure" on August 19 (Joint Exhibit 15; TY, Tr. 131-132); yet, he felt it was necessary to re-enter the home on August 26 to remove all firearms that he could find. Was it "secure" or not? DE continued to store WJ's firearms for several months in his garage and still had possession at the time of his interviews in late Fall of 2023. Grievant LW never recorded the serial numbers of WJ's firearms, nor did he take photographs for future reference. Grievant LW acknowledged that no criminal background check was performed for WJ or for DE.

The Arbitrator is baffled that Grievant LW did not obtain written consent for the retrieval and storage of firearms when he visited WJ in the hospital on August 26, 2023. The Grievant could have easily included consent for the retrieval and storage of WJ's firearms in the "hold harmless" agreement that he prepared (LW, Tr. 307-308). LW testified that he did not think of this option. What if another police officer or a community member saw someone in street clothes breaking and entering WJ's home? Grievant LW was off-duty and out of uniform on August 26. How would LW explain himself without any proof of owner consent? Secondly, Grievant LW engaged in the retrieval and transfer of multiple firearms without the following: completing a contemporaneous written report, recording serial numbers and photos of the firearms, conducting

background checks for the owner and the recipient, and obtaining verifiable consent of the owner for the transfer. Grievant LW acted emotionally and disregarded his police training and obligations to document his activities (LW, Tr. 294). LW needed to slow down and focus on his duties as a police officer before he could extend himself as a “nice neighbor” (Joint Exhibit 3, p. 9). As a Sergeant, Field Training Officer, and as a 32-year veteran of the police force, the Grievant served as a role model for other officers. He was trained on the importance of following protocol and documentation. “A reasonable police officer and supervisor would recognize the need to document an entry into a private residence and the recovery and transfer of firearms to a neighbor” (Joint Exhibit 3, p. 65). The Grievant’s actions exposed the Department to potential liability for what could have appeared to bystanders to be breaking and entering of a condemned property (TY, Tr. 130). His actions created potential liability under RCW 9.41.113 for engaging in the retrieval and transfer of firearms without explicit consent and without any documentation (TY, Tr. 130). What if WJ had been engaged in illegal activities that raised questions about the legitimacy of his ownership? What if WJ’s estranged wife or sister accused the Department of wrongfully removing firearms from WJ’s home? What if DE had not been a stellar citizen and had attempted to sell the firearms and profit from the sale? Grievant LW’s actions created unnecessary risks for himself and for the Department. Based on the weight of the evidence, the Arbitrator finds that the Town met its burden in proving a violation of Policy 340.3.5.

Grievant LW is charged with disobedience or insubordination for failure to follow orders from a supervisor or authorized person. The Town presented uncontroverted evidence that Grievant LW was directed to send the updated Insurance letter to the Department of Health to correct the paperwork for the Emergency Medical Services renewal application. Grievant LW acknowledged that he did not do so – he forgot (Joint Exhibit 3, p. 58; TY, Tr. 68-69).

Grievant LW was directed by Chief TY not to discuss the investigation and the matters being investigated with anyone who was not authorized by law to speak to him (i.e. an attorney and/or Union representative). The Arbitrator respectfully disagrees with the Town that Sergeant CB was an inappropriate person to speak with. CB is a Union shop

steward. The Town argues that CB did not represent Grievant LW in the investigatory interviews and should not have been consulted. The Arbitrator reviewed the Collective Bargaining Agreement, particularly Article 6 on Discipline and Discharge (Joint Exhibit 1). The Arbitrator could not find any language that restricts an employee to speak with only one Union representative throughout the disciplinary process. If CB was uncomfortable with being consulted, he could have stopped the conversation and directed Grievant LW to debrief with the same person who sat with him in the interviews.

The Town presented uncontroverted evidence that Grievant LW communicated with DE, SJ, and the sister of WJ in direct violation of the Chief's order and the admonition given by Investigator KT (TY, Tr. 68-69). Grievant LW and other witnesses acknowledged that the Grievant engaged in these conversations both in-person and on the telephone (Joint Exhibit 3, pp. 20, 21, 23, 35, 68-69; TY, Tr. 116-117). The reason for the "no contact" order was to maintain confidentiality and avoid influencing or changing other witnesses' testimony (Joint Exhibit 3, p. 17; TY, Tr. 33-34). The Union argues that Grievant LW could continue to communicate with DE and SJ about matters, as long as he did not discuss items actively under investigation. The Union argues that it was necessary for the Grievant to remain in contact with DE and SJ to discuss WJ's firearms and WJ's dog. The Grievant maintains that he did not say anything to influence the statements of other witnesses.

The Arbitrator respectively disagrees with the Union and the Grievant. The Arbitrator does not see a professional purpose in the Grievant continuing to communicate with SJ and DE regarding any of the matters under investigation after he closed the dispatch call on August 19. According to his entry in the CAD report, LW's work regarding the wellness check and securing of the home was done (Joint Exhibit 15). Grievant LW's follow-up activities were personally assumed by him and were not required by his officer role. In fact, his personal actions and communications conflicted with Department policies and procedures. Having personal and private conversations with SJ to tell her how much he loves his job, as well as reminding her of the care that he provided to WJ's dog, were signals to her to help the Grievant in keeping his job. In addition, "they talked about the dog, WJ, the house, and that **there was an ongoing investigation**"

(Joint Exhibit 3, pp.23,35). SJ came to Grievant LW's home to meet the dog and sit and have coffee together (Joint Exhibit 3, p.20). The Arbitrator notes that this in-person visit took place a few days before SJ's interview with Investigator KT. Grievant LW shared with SJ that **he was being investigated for not booking WJ before taking him to the hospital** (Joint Exhibit 3, p. 35).

DE and Grievant LW were friends and talked on the telephone several times and went out to dinner during the investigation. The Arbitrator is disturbed by the strange coincidence of having Grievant LW and DE make the same mistake about the timing of the second visit to WJ's home on August 19, 2023 (LW, Tr. 359-360). Both individuals first claimed that they went to WJ's home around 6:00 pm and had WJ direct them by phone on the location of his various firearms. No record existed to substantiate a 6:00 pm phone call. In follow-up interviews, both individuals revised their recollection and stated that they returned to WJ's home around 2-3 hours after WJ was taken to the hospital (this coincided with the 32-minute phone call at 2:19 pm). Once again, both individuals claimed that WJ was on the telephone and remarkably recovered from his surgery to remove a large tumor just 80 minutes after arriving at the hospital (LW, Tr. 284-285). Given the physical description of WJ at 12:49 pm that day, the Arbitrator highly doubts that WJ was in stable enough condition to direct anyone to find multiple firearms in his home on August 19. WJ remained in the hospital for two weeks to stabilize his medical condition. Implausible explanations demonstrate untrustworthiness. Recollections were revised because the only phone call with WJ took place at 2:19 pm on August 19 (Union Exhibit 3). The similarity of the Grievant's and DE's initial testimony and the similarity of their revised testimony points to the Grievant influencing and changing witness testimony. Based on the weight of the evidence, the Arbitrator finds that the Town met its burden in proving a violation of Policy 340.3.5 for refusal to carry out a direct order and for providing false and misleading statements to Investigator KT.

III. DID THE TOWN OF STEILACOOM HAVE JUST CAUSE TO DISCIPLINE THE GRIEVANT FOR VIOLATIONS OF POLICY 344.2.5?

Policy 344.2.5 described the following criteria to be considered in determining whether a police report was required:

- The injury is a result of drug overdose
- Attempted suicide
- The injury is major/serious, whereas death could result
- The circumstances surrounding the incident are suspicious in nature and it is desirable to record the event
- The supervisor decides the event needs to be document (Joint Exhibit 17)

The Department proposed a 30-day suspension for failure to file an incident report on the investigation of the situation at WJ's home (Joint Exhibit 4). The Town argued that the seriousness of WJ's medical condition and the presence of a large amount of blood outside the carport required a police report to be filed. The Union argued that the response call to WJ's home was a medical aid call that did not necessitate a formal report. Between February 1, 2022 and February 1, 2024, police officers responded to 346 calls coded as a welfare check (Union Exhibit 12, p. 2). Only seven of those calls were closed with a formal report (*Ibid*, p. 2). There were 14 calls in which firearms were seized and none of those calls were coded as welfare checks (*Ibid*, p. 2).

Grievant LW described WJ as being at "death's door" – this signaled a serious medical situation that could result in death. The large amount of blood outside the carport door could have been considered a "suspicious" circumstance. If the welfare check had ended with WJ being transported to the hospital and the home being secured by having the door screwed shut, the Arbitrator would have been open to considering whether it was reasonable to treat this call as a medical aid call that could be closed out with a brief note. Once the Grievant learned of multiple firearms and returned to WJ's home to re-enter and retrieve multiple firearms, the Grievant acknowledged that the nature of this dispatch call dramatically changed and that he should have written an incident report (LW, Tr. 342-343). The presence, retrieval, and transfer of firearms required a formal police report under Department policy (Joint Exhibit 17), Department training, RCW 9.41.113 (Joint Exhibit 19), and RCW 9.41.010 (Employer Exhibit F); TY, Tr. 121).

Based on the weight of the evidence, the Arbitrator finds that the Town met its burden in proving a violation of Policy 344.2.5 for failure to complete a police report to document WJ's life-threatening medical condition, the presence of multiple firearms in his home,

the uninhabitable condition of his home, the fact that an unsecured home was vacant while WJ was hospitalized, and the need to safely store WJ's firearms.

IV. ARE THERE MITIGATING OR AGGRAVATING FACTORS IN THIS CASE?

The Union argues that Grievant LW has provided 32 years of distinguished service to the Town of Steilacoom. His personnel file is replete with messages and certificates of appreciation for his police work, his community service, and his willingness to actively engage in community outreach (Joint Exhibit 6). There is no question that Grievant LW functioned and was viewed as a pillar of the Steilacoom community (LW, Tr. 254). He continuously expressed and demonstrated strong compassion and interest in helping others. Steilacoom representatives acknowledged the Grievant's community service and expressed how difficult it was for them to decide on termination as the disciplinary response to these policy violations.

The Grievant shared that he was physically exhausted and emotionally stressed at the time that he was dispatched to WJ's home. The Grievant asks that his physical exhaustion and emotional trauma be viewed as mitigating factors in determining an appropriate penalty for his misconduct. The Town pointed out that the Grievant's exhaustion and stress were self-inflicted (LW, Tr. 269-272, 274). He volunteered to work overtime to supervise the ferry line the evening before going to WJ's home. Grievant LW volunteered to assist in the investigation and management of the tragic train accident during the evening of August 18, even though Sergeant CB was willing to staff that investigation or rely on the officers who were assigned to the call. LW voluntarily covered for a colleague at 6:00 am on August 19, even though his shift started at 9:00 am that day. He agreed to take on the task of trying to help the accident victim's family with the grandmother's British passport. The Grievant exclaimed at the end of the dashcam recording that he was tired and needed a day off (Joint Exhibit 20); yet, Grievant LW voluntarily returned to WJ's home later on August 19 to search for and retrieve multiple firearms. He voluntarily brought WJ's dog to his own home and spent time taking care of the dog as it suffered a seizure in his care. Grievant LW voluntarily contacted the Steilacoom Building Department to condemn or "red tag" WJ's home. After he closed out the dispatch call, Grievant LW voluntarily sought out WJ's estranged

wife and sister. He voluntarily visited WJ in the hospital on a day off (August 26) and persuaded WJ to stay with his estranged wife after his hospital stay. The Grievant saw a broken person and took on a care giver role in purchasing clothing items and a wallet for WJ. Grievant LW enlisted the help of his friend DE and voluntarily re-visited the WJ home a third time on August 26. Grievant LW re-entered the home to retrieve ID cards and additional firearms. He voluntarily contacted SJ to provide a suggested contact for the sale of WJ's firearms and arranged a personal visit for her to meet WJ's dog. Grievant LW was never directed to engage in these activities - almost all of the follow-up efforts were done at Grievant LW's initiative (TY, Tr. 135). The Grievant did not stop to think about whether these "helping" activities monopolized his time and attention and interfered with the completion of his assigned police officer responsibilities.

The Town argues that there are aggravating factors to consider in this case. Grievant LW did not consult with his supervisors on how they wanted to respond to the presence of multiple firearms in an unsecured home, nor did he consult with the Evidence Room specialist. He chose to cut corners, skip completing an incident report, skip any background checks, ignore any firearm documentation needs, and engage in self-help. The Town argued that Grievant LW assumed that his 32 years of service and good deeds would supersede his disregard of police training and his multiple violations of Department policies.

The aggravating factor that is most concerning to the Arbitrator was the extent of ongoing communication between Grievant LW and other witnesses during the investigation. This communication was in direct violation of the Chief's order and the Investigator's reminder. Evidence showed that Grievant LW's communication influenced and changed witness testimony (LW, Tr. 356-358). Significant discrepancies and the hedging of his responses undermined his credibility. The Town argues that Grievant LW's disregard of direct orders, his lack of respect for the confidentiality of the administrative investigation, and his misleading statements all undermine the confidence of the Department in trusting Grievant LW to be truthful and faithfully execute Department policies and applicable laws.

The Arbitrator notes that this case involves questions and accountability over the retrieval and transport of two wheelbarrow loads of firearms – no small matter. The Grievant did not demonstrate any malice or intent to profit from these activities; however, he failed to recognize the seriousness of his actions and the importance of following departmental policy and protocol to protect everyone involved. Grievant LW claimed to have an owner's directive and consent at the time that WJ's weapons were retrieved. This claim defied logic. The claim ran counter to the owner's incapacity during a health crisis, and it was unsupported by the evidence presented in this case.

V. WHAT IS THE APPROPRIATE LEVEL OF DISCIPLINE FOR THE POLICY VIOLATIONS THAT WERE PROVEN?

As discussed in the sections above, the Arbitrator finds that the Town met its burden in proving several violations of Policy 340.3.5 and a violation of Policy 344.2.5. In trying to determine the appropriate level of discipline, this Arbitrator is reminded of some work done by Arbitrators Abrams and Nolan. They developed a systematic theory of just cause that sets forth the basic purpose of appropriate discipline:

For just cause to exist, discipline must further one or more of management's three legitimate interests – rehabilitation of a potentially satisfactory employee; deterrence of similar conduct; and protection of the employer's ability to operate the business successfully.

Brand and Biren, *Discipline and Discharge in Arbitration*, (3rd Ed. 2015), citing Towards a Theory of Just Cause in Employee Discipline Cases, *1985 Duke Law Journal* 594 (1985).

How does one rehabilitate someone who does not acknowledge misconduct? Grievant LW exclaimed numerous times that "he had done nothing wrong" and that he was proud of what he had done (LW, Tr. 298-299, 342). The Grievant finally acknowledged the need to write an incident report at the arbitration hearing, but he refused to recognize the seriousness of transporting two wheelbarrows of firearms without documentation

and verifiable owner consent. A police department cannot rehabilitate an employee and deter future conduct when that conduct is not seen by the employee as problematic.

The Union has essentially argued that there was de minimus harm to the Department, since WJ and his family turned out to be satisfied with the outcome of LW's actions and neighbor DE turned out to be a stellar and upright citizen. Essentially, the Union is arguing "no harm, no foul". Further, the Grievant maintained that he did not receive any personal financial gain from his interactions with WJ, DE, and SJ.

Grievant LW's untruthfulness and influence on other witnesses, coupled with his self-help activities and disregard for following Department policies and orders, have seriously damaged his working relationships with the Chief and his colleagues. LW's honesty, trustworthiness, and reliability remains in doubt. LW's future testimony as a police officer can be impeached (Employer Exhibit C – Brady letter). His supervisors and his coworkers can no longer trust him – "there's a lot of trust that was lost" (TY, Tr. 70). His coworkers will resent his accusations of conspiracy – "my enemies within the organization" (LW, Tr. 252, 352) and be unwilling to rely on him as a team member. During the arbitration hearing, LW went on a rant regarding his suspicions of CB conducting a secretive campaign to ruin his reputation (LW, Tr. 241-245). The Grievant and the Department would remain vulnerable to charges of incomplete, untruthful, or tampered investigations for any future assignments performed by the Grievant. Given the notoriety of this arbitration in the local media (Union Exhibit 14), community members are aware of the controversy. Reinstatement of the Grievant creates a situation where community members would lack confidence that all police officers in the Steilacoom Public Safety Department could be counted on to be thorough, truthful, and accountable in their work.

Termination has been upheld in cases where an employee has falsified records or decided not to keep accurate records in order to help a distressed customer. See *Farmer Brothers Company*, 93-1 ARB ¶3144 (Christopher, 1992). In other cases, arbitrators found it absurd to reinstate long-term employees who failed to properly record certain transactions, because their records would be unreliable going forward.

See *Interstate Brands Corporation*, 97 LA 293 (Canestraight, 1991); *Contel of Mo., Inc.*, 92-1 ARB ¶8143 (Fowler, 1991); *Western Airlines*, 83-2 ARB ¶8341 (Koven, 1983).

The Union argues that termination was an excessively harsh penalty for Grievant LW's misconduct. The Union submitted evidence of other discipline cases involving police reports and work performance to argue that the Department has responded more leniently in other cases (Union Exhibit 13). A 20-year veteran officer was issued a reprimand for conducting a rushed investigation of reported child abuse and failing to interview all witnesses (Union Exhibit 13). The officer had filed an incident report and the penalty was issued for a first-time offense. The second case involved a suspension for the same officer for failure to take photographs of injuries resulting from suspected domestic violence (Union Exhibit 13). Again, the officer had filed an incident report of his investigation. In a third case, a newer officer was terminated for questions regarding the soundness of his judgment and his disregard of written directives and officer safety policies (Union Exhibit 13). The instant case involves poor judgment and disregard of written directives.

Grievant LW received four known disciplinary penalties prior to his termination – directed not to discuss an incident in 2019, lack of a proper report in 2019, and two letters of counseling in 2022 (Union Exhibit 13). No details were provided to explain these prior disciplinary situations. If the Grievant had taken the investigation seriously and prepared a timeline for his interviews, if he had maintained confidentiality and not attempted to influence the testimony of others, and if he had accepted accountability for his actions and responded truthfully on why he felt compelled to retrieve and secure WJ's firearms (instead of claiming WJ's directive and consent), this case may have turned out differently. Truthfulness and accountability are critical aspects of a police officer's work. Community outreach cannot supersede the basic responsibilities of a law enforcement position.

AWARD

Based on the weight of the evidence and arguments presented by the parties, as well as the aggravating and mitigating factors presented in this case, the Arbitrator finds that the Town of Steilacoom had just cause to terminate the employment of Grievant LW.

The grievance is dismissed.

Respectfully submitted this 18th day of November, 2024.

/s/ Donna E. Lurie, Arbitrator

Arbitrator Donna E. Lurie

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