

KARL F. SLOAN
Okanogan County Prosecuting Attorney
P. O. Box 1130 / 237 Fourth Avenue North
Okanogan, WA 98840
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Criminal Division

Jennifer Richardson, Chief Criminal Deputy
Joseph M. Caldwell, Criminal Deputy
Felecia Chandler, Juvenile Court Deputy
David Y. Gecas, District Court Deputy
Clayton A. Hill, District Court Deputy

Civil Division

Stephen Bozarth, Chief Civil Deputy
Dave Jorgensen, Child Support Deputy

Victim-Witness Assistance Program

Susan Hinger, Program Coordinator
Lona Fritts, Program Assistant

Office Administrator

Susan Hinger

July 10, 2020

Mike Prince
MacDougall & Prince
PO Box 4409
Okanogan WA 98840

Re: State v. Tammy Marie Malgesini
Cause No. C24903

Dear Mr. Prince,

This letter is to notify you that Deputy Shane Jones is a potential witness in the State's case against your client. Deputy Jones was disciplined by the Okanogan County Sheriff's Office on August 28, 2006 related to conduct associated with a DUI arrest on August 13, 2006 in Kitsap County, Washington; including allegations that Deputy Jones was untruthful in his responses to questions from WSP officers involved in the DUI arrest. Deputy Jones entered a deferred prosecution in Kitsap County District Court case # 17687501. Deputy Jones was reinstated pursuant to an arbitrator's Opinion and Award dated October 11, 2007.

This notice is being provided to you to satisfy any potential discovery obligation pursuant to In re Pers. Restraint of Gentry, 137 Wn.2d 378, 396 (1999); Brady v. Maryland, 373 U.S. 83, 87, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963).

Sincerely,

David Y. Gecas, WSBA #40424
Deputy Prosecuting Attorney



OKANOGAN COUNTY SHERIFF'S OFFICE

FRANK T. ROGERS, SHERIFF

ADMINISTRATION, INVESTIGATION AND CIVIL
123 - 5TH AVENUE NORTH, ROOM 200
OKANOGAN, WA 98840
509-422-7200 FAX: 509-422-7217

CORRECTIONS AND COMMUNICATIONS
149 - 4TH AVENUE NORTH
OKANOGAN, WA 98840
CORRECTIONS: 509-422-7230 FAX: 509-422-7236
COMMUNICATIONS: 509-422-7232 FAX: 509-422-7223

August 20, 2009

To: Deputy Shane Jones

From: Frank T. Rogers
Sheriff Okanogan County Sheriff's Office

Re: Grievance-Failure to Follow Jones Arbitration Award-Step 2

Deputy Jones,

This letter is a written response to the discussion that I had with Guild President Mike Murray and Commissioned Vice President Tracy Harrison on 08-14-09 at 1410 hours in reference to your grievance on the Special Assignment of K9. I have read all of the attached documents and had a verbal discussion with the guild reference this matter. Below is my decision reference this matter.

In reference to your first point, that Chief Dave Rodriguez did not respond to an Association letter dated 06-11-09. As discussed in the meeting with Guild President Mike Murray and Commissioned Vice President Tracy Harrison, the letter was in fact responded to. After Chief Rodriguez received the letter I advised him that I would deal with the letter. The same day I received the letter I met with Guild President Murray. I advised Guild President Murray that the letter was nothing more than an opinion letter from Commissioned Vice President Tracy Harrison. I also explained to Guild President Murray that I would not be responding to the letter but was letting the guild know that I disagreed with Commissioned Vice President Harrison's opinion on the arbitrator's ruling. So in short, there is no valid complaint since the letter was dealt with directly between myself and Guild President Mike Murray. All of this was discussed in our meeting and Guild President Murray agreed that we did have the conversation and that he did inform Commissioned Vice President Harrison that I would not be responding in writing.

In reference to the second issue, the Narcotics K9 Unit, I disagree with your assessment of the situation. I agree that there does exist a vested property right to your position of Deputy Sheriff. It is well recognized that an individual does have a property interest in a government job and in such, Arbitrator Sherman B. Kellar did rule that you would be reinstated to the Police Officer position, which was done on June 1, 2009.

I do not feel there is a vested property right for the Special Assignment of Narcotics K9. You state that it can be either considered discipline or retaliatory in nature if you do not receive a Narcotics K9 unit, again I disagree. Deputy Jones, on your first day back to work, June 1, 2009, yourself, Guild President Mike Murray and myself met in my office. At that time I advised you that in your absence K9 Echo had been reassigned with Deputy Laura Wright and that K9 Echo would remain with her. Your response at that time was that you were not interested in the K9 unit, you just wanted to get back to work. You also stated you wanted to get into shape again and you just wanted to prove yourself to everyone. I advised you at that time you did not have to prove yourself to me or anyone else within this agency. I explained that you were now back to work and you had the same rights and seniority as anyone else in the Sheriff's Office. I also explained to you that you could apply for any position or Special Assignment within the agency, just like everyone else.

As it has been well established that we have always had two Patrol K9 Units and two Narcotic K9 units within the field division and we have had one Narcotic K9 unit in the jail. At this time all of the positions are filled but when an opening does arise you have the right to apply for next available Narcotics K9 unit, which I encourage you to do.

<u>ADMINISTRATION</u>	<u>INVESTIGATIONS</u>	<u>COMMUNICATIONS</u>	<u>CORRECTIONS</u>	<u>EMERGENCY MANAGEMENT</u>	<u>CIVIL</u>
JOSEPH SOMDAY Undersheriff	DAVE RODRIGUEZ Chief Criminal Deputy	SHAWN MESSINGER Chief Special Operations Deputy	NOAH STEWART Chief Corrections Deputy	SCOTT MILLER Homeland Security Coordinator	BETH BARKER Chief Civil Deputy

E-MAIL: OCSO@CO.OKANOGAN.WA.US [HTTP://OKANOGANSHERIFF.ORG](http://OKANOGANSHERIFF.ORG)

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Deputy Jones there are several issues that I took into consideration in making my decision, which involved all of documents that were submitted as well as the current contract, policy and civil service rules. As you well know that within the Sheriff's Office we have several areas of special assignments, one of them being the K9 program.

In Policy it states the following;

POL-12-1 ASSIGNMENT OPENINGS

Position openings within the Sheriff's Office will adhere to the Civil Service rules. Assignments made within the job classification will be made by the Sheriff. Special assignment opportunities will be offered to all qualified members. These assignment openings will be announced by posting the information on the Sheriff's Office bulletin board for a minimum of 30 days prior to position selection. The announcements will include all pertinent information and any required applicant response. Employees selected and assigned to any job assignment may be removed from that assignment at any time by the Sheriff.

Under the Okanogan County Civil Service Rules it states the following;

4.07 ASSIGNMENT

An employee may be assigned to a position which carries additional salary and additional limited responsibilities and is within the scope of the specification for the class from which assignment is made.

6.05 CLASSIFICATION OF POSITIONS

g. ASSIGNMENT: An employee may be assigned to a position which carries additional salary and limited additional duties and responsibilities and is within the scope of the specification for the class from which assignment is made. If the duties of the position for which an assignment is proposed are beyond the scope of the official specification for the base class, such position must be separately classified and eligibility established by examination. No permanent or vested rights shall be acquired by reason of such assignment, and such assignments shall be subject to review and change by the appointing authority at any time.

And under the current contract for the OCSEA and Okanogan County it only addresses the additional pay for the care and grooming of the K9. The contract does not cover any other area when it comes to the police dog.

8.10

An employee assigned to care for and groom a police dog outside the regular shift shall be paid at the rate of the State minimum wage per hour for each hour worked. The parties agree work time shall not exceed fifteen 15 hours per month without prior authorization of the Sheriff. All overtime hours shall be paid at one and one halftimes the hourly State minimum wage

Under these three areas I feel it addresses the issue at hand. Under policy it is very clear when it comes to special assignments, it states, "Employees selected and assigned to any job assignment may be removed from that assignment at any time by the Sheriff." This has been a past practice in several of the special assignment areas, such as Detectives, Honor Guard, and Forest Deputy to name just a few. Over the years several Deputies have been moved in and out of these Special Assignments.

In the Okanogan County Civil Service Rules it also addresses the issue of Assignments and specifically states, "No permanent or vested rights shall be acquired by reason of such assignment, and such assignments shall be subject to review and change by the appointing authority at any time."

And as stated there is nothing in the OCSEA and Okanogan County contract that deals with Special Assignments, except in reference to premium pay for Detectives and FTOs and for care and grooming of a police dog. There is nothing else within the contract dealing with patrol dog assignments. It should also be stated that it is common knowledge that an assignment to a specialty position is not considered a promotion. Promotions are mandatory subjects of bargaining, Assignments are not.

I feel that Arbitrator Kellar was very specific and clear on his ruling. In his ruling he ordered that you be reinstated to the Police Office Position that you held at the time of your termination, that has been done. He also ordered that you forfeit four months pay including all attendant's benefits and be entitled to all back pay with full benefits after said deduction until your reinstatement, that was also done. I see nothing to indicate that you be automatically reassigned another Narcotics K9 and as stated I do not believe that the K9 is a property right. On the contrary, I believe that the Special Assignments are part of the management rights and under the Okanogan County Civil Service rules it in fact states that no permanent or vested rights shall be acquired by reason of such assignment.

At this time I feel that we have fulfilled the Arbitrator's Award and I feel there is no Double Jeopardy in play here. You are not being disciplined or being retaliated against. As for K9 pay, Chief Criminal Deputy Dave Rodriguez is right, when he stated in his

response, that there isn't a premium pay for being assigned as a K9 Handler. The pay is for an employee assigned to care for and groom a police dog outside the regular shift and shall be paid at the rate of the State minimum wage per hour for each hour worked. As I stated to you in person and in this letter, you have the right to apply for any of the Special Assignment programs, namely the Field Narcotics K9, when the next available assignment is open.

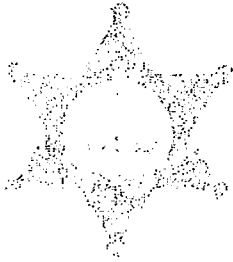
Respectfully,



Frank T. Rogers
Sheriff

Okanogan County Sheriff's Office

Cc: Undersheriff Somday
Chief Criminal Deputy Rodriguez
Deputy/Guild President Mike Murray
Commissioned Vice President Tracy Harrison
File



OCSEA

Okanogan County Sheriff's Employee's Association
P.O. Box 826 Okanogan, WA 98840

Grievance Prepared by Tracy S. Harrison, OCSEA Commissioned VP.

Respectfully submitted July 17, 2007

I. Facts / Circumstances of the Incident:

On June 1, 2009 Deputy Jones returned to duty status as a Deputy Sheriff per an Arbitration award upheld by Chelan County Superior Court Judge, Leslie Allen.

On June 11, 2009 the OCSEA Commissioned Vice President submitted a letter to the Chief Criminal Deputy regarding Deputy Jones' status as a K9 Handler. The Association, as of this date, has not received a response from the Sheriff's Administration. The letter was an inquiry as to what the Employer's intention was regarding Deputy Jones' status as a K9 Handler per the Arbitrator's Award.

On June 31, 2009 Deputy Jones received his end of the month pay check. The Employer failed to provide Deputy Jones with premium K9 Handler pay, as is required per the Arbitrator's Award. The letter submitted to the Chief Deputy on 6/11/2009 is attached.

II. Specification of wrongful act(s) and the resulting harm from the wrongful act(s).

The current Collective Bargaining Agreement between Okanogan County and the Commissioned Employees of OCSEA has been violated by the Employer. Specifically Article 20 - Grievances and Arbitration. Article 20.4, paragraph 3, section c, states that, "The decision of the arbitrator shall be final and binding upon the parties to the grievance provided the decision does not involve action by the Employer which is beyond its jurisdiction nor shall the arbitrator have the authority to amend, alter or modify this Agreement and its terms shall be limited to the interpretation and application of this agreement."

The resulting harm is a monetary loss to Deputy Jones. This also constitutes further punishment to Deputy Jones that was not imposed by the Arbitrator.

On June 11, 2009 the Association attempted to prevent this grievance by sending the letter of inquiry to the Chief Criminal Deputy. The letter was clearly a request for information pertaining to the Arbitration Award, specifically Deputy Jones' K9 status. The Employer failed to respond to the Association's request for information.

The resulting harm is to the Association's ability to adequately represent Association members. It is unacceptable for the Employer to ignore requests for information from the Association.

III. Remedy, Adjustment or Other Corrective Action Sought:

Deputy Jones needs to be made whole as per Arbitrator Sherman B. Kellar's award of 10/11/2007. Mr. Kellar was very specific as to what the punishment was for Deputy Jones' misconduct. That punishment did not include taking away his K9 Handler status. Deputy Jones needs to be restored to K9 Handler status and continue to receive the pay associated with that position, including premium K9 Handler pay for the month of June 2009.

The Employer needs to acknowledge all formal communications from the Association, and in the future, reply to those formal communications in a reasonable and timely manner.

Tracy S. Harrison - OCSEA Commissioned Vice President. Signed this 17th day of July, 2009. Okanogan, Washington

Attachments: 1) Letter to Chief Rodriguez dated 6/11/09; 2) Arbitration and Award Document

excerp. from 10-11-07 opinion to AWARD
ATTACHMENT 2

since she went to work intoxicated and aware that she had been drinking before reporting to work. Her punishment was suspension without pay and a directive that she seek treatment at her own expense and continue until she could produce a certification from a certified treatment program. Also, they indicated some leniency with respect to her pay toward the end of the treatment. The Grievant's actions, while severe, occurred when he was on vacation in the far western part of the state. Within days he was on damage control by recognizing and admitting he was an alcoholic, by immediately joining AA as a support group and seeking and receiving Deferred Prosecution. All of these actions were done before Grievant was terminated. I find that Grievant was subject to disparate treatment with respect to the punishment imposed by the County compared with that given a fellow employee whose actions were more severe for the work place than Grievant's.

Deferred Prosecution. The process of Deferred Prosecution is a built-in forgiveness that is available to first time DUI offenders. It converts a DUI into a forgivable offense by granting a process which, if followed over a five year period, will expunge the offense from the offender's record.⁷ The term means just what it says. There are no charges filed. The case is simply put on hold. If there are any violations of the terms of the deferment then the charges are pulled from shelf and the prosecutor proceeds to prosecute. Grievant has been in this process since shortly after his arrest and prior to his termination. In addition, he is taking treatment from Quality Resources an alcohol treatment facility in Wenatchee. His personal counselor is Morris Regan. He testified that Grievant came to him on September 6, 2006, and told Mr. Regan that he had a drinking problem and had a horrible experience. He stated that he was willing to do anything necessary to take care of it. When he went to Mr. Regan Grievant had been sober since the DUI arrest, a period of thirty days. Mr Regan testified that

⁷ In the initial two years Grievant will be required to do intensive treatment for six months, then sixteen months of weekly counseling sessions. He will attend a minimum of two support groups per week which are verified in writing. After that there is a three-year probation period. At any time during this period if he has a drug or alcohol incident the deferment is revoked and charges are filed in court.

Grievant has done a great job. It has been almost a year and he has gone to more groups than required by his deferred prosecution and has become a group leader. Grievant's tenure with Mr. Regan's program will last until September 2008. Mr. Regan who has seen a thousand or more patients in his career testified that Grievant has done all that has been asked of him and more. He stated that the prognosis is good and that if he continues to reach out to people and go to support groups there is an excellent chance that he will never drink again.

The County has an issue relating to Grievant's dishonesty in this matter. His arguments and citations support his position. I would agree with its position if Grievant's honesty were an issue here. It is not. Unfortunately, the County's arguments and case authority are not relevant because Grievant, at this time, has not been convicted of a crime or in fact even charged with a crime. The County certainly knows that Grievant is innocent until proven guilty. His protection currently lies in the deferred prosecution process sanctioned by RCW 10.05.

The deferred prosecution process inherently provides that post-termination evidence be considered since it is a monitoring process that continues for five years. It is, in essence, a five-year last chance program.

X. CONCLUSION

I find by clear and convincing evidence that the County violated the just cause requirement against disparate treatment in the case of the discipline imposed on Officer Lewis, which was suspension, verses that of Grievant which was termination. I further find the penalty of termination for Grievant's proven misconduct too severe. A lesser discipline is appropriate. The record shows Grievant is a good pro-active police officer and up to this point had only one written reprimand in his six year tenure with the County. The record indicates that he was an excellent K9 Officer who was a master trainer and trained other K9 dogs through out the state of Washington. In short, he is a valuable employee and as such is a valuable asset to the County. However, I believe that Grievant's discipline needs to be severe enough to catch his attention so that he realizes any additional misconduct within the

next two years could be reason for immediate termination.

Accordingly, it is my finding Grievant is to be reinstated to the police officer position he held at the time of his termination. Grievant shall forfeit four months pay including attendant benefits and shall be entitled to all back pay with full benefits, after said deduction, until his reinstatement.

XI. AWARD

After careful consideration of all oral arguments, evidence submitted, briefs filed and for the reasons set forth in the foregoing opinion, it is awarded:

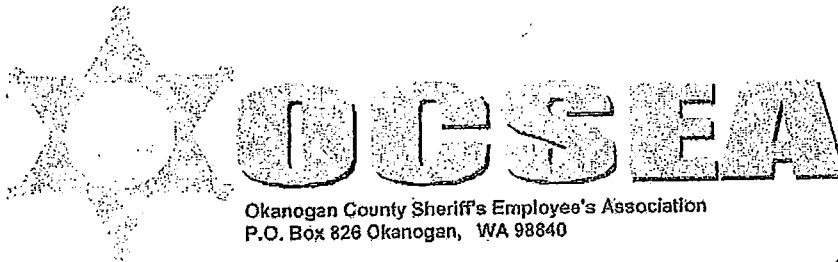
1. The Grievance is allowed subject to the following conditions:
 - A. The Grievant is to be reinstated to the Police Officer position that he held at the time of his termination.
 - B. Grievant shall forfeit four months' pay including all attendant benefits and be entitled to all back pay with full benefits after said deduction until his reinstatement.
2. Pursuant to Article 20.3 of the Contract, the Arbitrator's fees and charges shall be borne equally by the County and the Association.
3. The Arbitrator, pursuant to the stipulation of the parties, will retain jurisdiction for a period of forty-five days from the date of the award to assist the parties, if needed, in its implementation.

DATED: This 11th day of October, 2007



Sherman B. Kellar, Esq.
Arbitrator

ATTACHMENT 3



To: David Rodriguez
Chief Criminal Deputy Okanogan County Sheriff's Office

From: Tracy S. Harrison
OCSEA Commissioned Vice President

Re: Reinstatement of Deputy Shane Jones to K9 Handler Status

Date: Thursday June 11, 2009

Dear Chief Rodriguez;

In June 2007 there was a three-day arbitration hearing to settle a grievance brought forth by the Employee's Association against the County for its termination of Deputy Shane Jones. Sherman B. Kellar was the Arbitrator agreed upon by both parties. On October 11, 2007 Mr. Kellar submitted his opinion and award.

Mr. Kellar reviewed the facts presented during the hearing. In his opinion and award document he wrote, "The essential and pertinent facts in this matter are uncontradicted." He further wrote, "During his tenure with Okanogan County, Grievant was assigned to be a special canine narcotics officer in 2002 and continued in that position until his termination."

In his conclusions, Mr. Kellar said the following: "The record shows Grievant is a good pro-active police officer and up to this point had only one written reprimand in his six year tenure with the County. The record indicates that he was an excellent K9 Officer who was a master trainer and trained other K9 dogs through out the state of Washington. In short, he is a valuable employee and as such is a valuable asset to the County."

In his award, Mr. Kellar said the following: "1. The Grievance is allowed subject to the following conditions; A. The Grievant is to be reinstated to the Police Officer position that he held at the time of his termination. B. The Grievant shall forfeit four months' pay including all attendant benefits and be entitled to all back pay with full benefits after said deduction until his reinstatement."

Now, whereas the County and the Association jointly interpreted Mr. Kellar's award under subsection "B" to include his K9 pay, I believe that Jones is hereby entitled to continue receiving this benefit. I further believe that under subsection "A", the County is required to reinstate Deputy Jones to the Police Officer position that he held at the time of his termination. The "uncontradicted" fact documented by Mr. Kellar is that Deputy Jones was assigned to be a special canine narcotics officer and that he continued in that position until his termination.

I respectfully ask the County, on behalf of Deputy Jones and all Association Members, what the plan is to restore Deputy Jones to his former position of K9 Handler?

Sincerely,

A handwritten signature in cursive script that reads 'Tracy S. Harrison'.

Tracy S. Harrison, OCSEA Commissioned Vice President

Cc: Jim Cline, Cline & Associates
Michael Murray, OCSEA President
Bill Miller, OCSEA Non-Commissioned Vice President
Shane Jones- OCSEA Member (Grievant)



OKANOGAN COUNTY SHERIFF'S OFFICE

FRANK T. ROGERS, SHERIFF

ADMINISTRATION, INVESTIGATION AND CIVIL
123 - 5TH AVENUE NORTH, ROOM 200
OKANOGAN, WA 98840
509-422-7200 FAX: 509-422-7217

CORRECTIONS AND COMMUNICATIONS
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OKANOGAN, WA 98840
509-422-7200 FAX: 509-422-7236

Date: August 1, 2009
To: OCSEA President, Shane Jones, Tracy Harrison
From: Chief Criminal Deputy Rodriguez
Re: Response to Grievance

COPY

As head of the Sheriff's Office Field Division I am officially responding to the grievance filed with me on July 18th, 2009 by Tracy Harrison, on behalf of Shane Jones. Harrison's grievance alleges that the County is failing to follow an Arbitrator's ruling by not reinstating Jones to the assignment of K9 Handler and subsequently not providing Jones with K9 pay.

The substance of the grievance is based on Sgt. Harrison's interpretation of the Arbitrator's ruling that Jones being reinstated to his previously held "police officer position" includes any specialty assignments that he had at the time of his termination. I disagree with this interpretation. The difference between Jones's previously held 'position' as a Field Deputy and his 'assignment' as a K9 Handler is clearly defined in 12-1 of the Policy Manual.

Position openings within the Department will adhere to the Civil Service rules. Assignments made within the job classification will be made by the Sheriff. Employees selected and assigned to any job assignment may be removed from that assignment at any time by the Sheriff.

A position is a job classification such as "Field Deputy" or "Field Sergeant". An assignment is when you are given the duties of Forest Patrol, Task Force, or K9 to name some examples.

On June 1st, 2009, the day that Jones was reinstated to his position as a Field Deputy, he met with Sheriff Rogers and Guild President Mike Murray. Jones was told at that time by Sheriff Rogers that he would not be reassigned as K9 Echo's handler but he is free to apply for any future openings to the K9 squad or any specialty assignment that may come available. Therefore, effective June 1st, 2009 Jones was unassigned as a K9 Handler. I've been told that Jones's response to this information was that his current goals with the Sheriff's Office do not include seeking any specialty assignments.

The second grievance issue states that Jones has suffered a monetary loss due to not receiving "premium K9 Handler pay for the month of June, 2009." There actually isn't a premium pay for being assigned as a K9 Handler. The pay received is compensation for off duty care and maintenance of County property in compliance with the Fair Labor and Standards Act. Jones has not provided

ADMINISTRATION
JOSEPH SOMDAY
Undersheriff

INVESTIGATIONS
DAVE RODRIGUEZ
Chief Criminal Deputy

COMMUNICATIONS
SHAWN MESSINGER
Chief Special
Operations Deputy

CORRECTIONS
NOAH STEWART
Chief Corrections Deputy

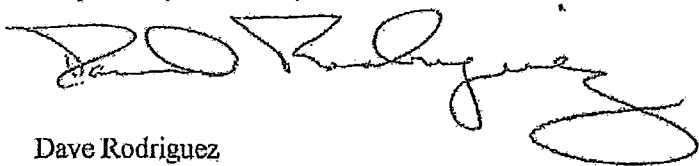
HOMELAND SECURITY
SCOTT MILLER
Emergency Mgmt Coordinator

CIVIL
BETH BARKER
Chief Civil Deputy

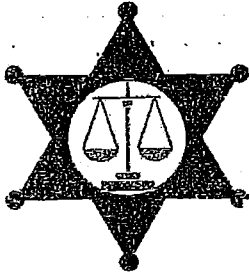
care and maintenance for a police service dog belonging to the Sheriff's Office during the month of June 2009 and therefore not entitled to any compensation. Jones can, however, apply for any future K9 Handler openings.

Harrison and I met on July 31, 2009 and I explained my perception of the Arbitrator's decision and how it applies to Jones's status as a K9 Handler and corresponding K9 pay.. No concessions or solutions were reached.

Respectfully submitted;

A handwritten signature in black ink, appearing to read "Dave Rodriguez". The signature is stylized with large, sweeping loops and a long horizontal stroke at the end.

Dave Rodriguez
Chief Criminal Deputy



OCSEA

Okanogan County Sheriff's Employee's Association
P.O. Box 826 Okanogan, WA 98840

Frank Rogers
Okanogan County Sheriff
123 5th Avenue North; Room 200
Okanogan, Washington 98840

Tracy S. Harrison
OCSEA- Commissioned Vice President
PO Box 826
Okanogan, Washington 98840

August 10, 2009

Re: Grievance- Failure to follow Jones Arbitration Award

Dear Sheriff Rogers,

In accordance with Article 20.4 of the current collective bargaining agreement, this is written notification to you of an unresolved grievance. Please review the attached documents pertaining to the grievance. We look forward to meeting with you in the near future in hopes that we may amicably resolve this issue.

Respectfully,

Tracy S. Harrison

Cc: Michael Murray- OCSEA President

Attachments:

1. Grievance- Failure to follow Jones Arbitration Award
2. 10-11-07 OpinionAndAward
3. 6-11-09 Letter to CCD Rodriguez reference Jones K9 Handler Status
4. Administration Response to Step 1 Grievance Meeting

Joe Somday

From: Joe Somday
Sent: Tuesday, May 26, 2009 9:52 AM
To: 'dblair@cjtc.state.wa.us'
Subject: Shane Jones
Attachments: 96-Jones Letter 5.19.09..doc; Jones-CJTC hire-reinstatement Form.doc

Doug,

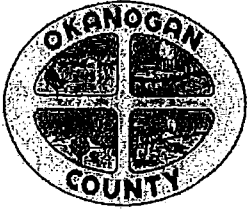
Per our conversation please find attached a Peace Officer Hire form that you stated could be e-mailed instead of faxed to you and a copy of the letter given to Shane Jones from the County advising him of the reinstatement. This for is not signed by the Sheriff as it is e-mailed to you.

As we discussed and you stated per RCW 43.101.125 Shane's certification did not lapse as the review of the discipline was being conducted. You also pointed out that per RCW 43.101.095 he is not required to undergo another polygraph and psychological exam.

If you have any question please feel free to call anytime.

Thank you for your assistance,

Joe Somday U-2
Undersheriff
Okanogan County Sheriff's Office
123 5th Ave. N. Rm. 200
Okanogan, WA 98840
(509) 422-7197 Desk
(509) 846-6002 Cell
(509) 422-7217 FAX



OKANOGAN COUNTY
DEPARTMENT OF ADMINISTRATIVE SERVICES

Human Resources
Risk Management

Budget/Finance
Capital Facilities

Nanette Kallunki, Director
nkallunki@co.okanogan.wa.us

May 19, 2009

Mr. Shane Jones
PO Box 503
Pateros, WA 98846

Re: Okanogan County v. OSCEA
Court of Appeals Case No. 279375-III

Dear Mr. Jones,

This is to notify you Okanogan County has requested dismissal of its appeal in the above referenced matter and you will be reinstated to your position of Field Deputy with the Okanogan County Sheriff's Office according to the terms of the Arbitrator's award. Please to report to Sheriff Rogers at 8:00 a.m. on Monday, June 1, 2009. You will be scheduled to work regular patrol in the south end under the supervision of Sergeant Harrison.

You are not required to re-certify through the basic equivalency process; however, you will be placed in a two-month field training officer program. This is to ensure you understand new laws and basic concepts that may have changed during your absence. You will also be required to update much of your training, including training on the use of the new Spillman software system for records management.

Should you have any questions, please contact the undersigned or Sheriff Rogers.

Regards,

Nanette Kallunki
Administrative Services Director

Cc: Sheriff Frank Rogers
Mike Murray, OSCEA President

Rocky Jackson, Attorney at Law

Joe Somday

From: Joe Somday
Sent: Tuesday, May 26, 2009 9:53 AM
To: Mike Worden; Beth Barker
Subject: Shane Jones

Mike,

Shane Jones will be coming back to work on 06-01-2009. Please prepare him a log-in for Spillman access and send his log-in information to Sgt. Harrison.

Thank you,

Joe Somday

Joe Somday

From: Joe Somday
Sent: Tuesday, May 26, 2009 9:53 AM
To: Claudia Smith
Subject: Shane Jones

Claudia,

Shane Jones will be coming back to work on 06-01-2009. Please note this in your records.

Thank you,

Joe Somday

Joe Somday

From: Joe Somday
Sent: Tuesday, May 26, 2009 9:53 AM
To: Brenda Crowell; Lalena Johns
Subject: Shane Jones - SCAN

Lalena,

Shane Jones will be coming back to work on 06-01-2009. Please obtain a SCAN # for him and send it to me when you have it.

Thank you,

Joe Somday

Joe Somday

From: Joe Somday
Sent: Tuesday, May 26, 2009 9:53 AM
To: Randy Clough; Mandy Hancock
Subject: Shane Jones

Randy,

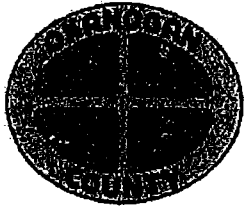
Shane Jones will be coming back to work on 06-01-2009. Please prepare a county log-in for him as well as VPN access. You can e-mail me the log in information/password(s) when you get them. His phone extension will be 7725 if you can change the name to reflect that as well.

Also, please set up either laptop SH-BBPW7J1 or SH-2CPW7J1 for him as deliver it to me when done so that I can apply an asset sticker & add it to my inventory.

The remaining laptop that you have, SH-BBPW7J1 or SH-2CPW7J1, will be for our new hire which should be here within a month.

Thank you,

Joe Somday



OKANOGAN COUNTY
DEPARTMENT OF ADMINISTRATIVE SERVICES

Human Resources
Risk Management

Budget/Finance
Capital Facilities

Nanette Kallunki, Director

nkallunki@co.okanogan.wa.us

May 21, 2009

Mr. Shane Jones
P.O. Box 503
Pateros, WA 98846

Re: Return to Work

Dear Mr. Jones,

This letter is written to notify you Okanogan County is offering you reinstatement to your position of Field Deputy with the Okanogan County Sheriff's Office according to the terms of Chelan County Superior Court Order, Cause No. 07-2-01097-6, dated March 11, 2009. Please report to Sheriff Rogers at 8:00 a.m. on Monday, June 1, 2009. You will be scheduled to work regular patrol in the south end under the supervision of Sergeant Harrison.

You are not required to re-certify through the basic equivalency process; however, you will be placed in a minimum two-month field training officer program. This is to ensure you understand new laws and basic concepts that may have changed during your absence. You will also be required to update much of your training, including training on the use of the new Spillman software system for records management.

Should you have any questions, please contact the undersigned or Sheriff Rogers.

Regards,

Nanette Kallunki
Nanette Kallunki

Administrative Services Director

cc: Sheriff Frank Rogers
Mike Murray, OSCEA President
Jim Cline, Attorney for OCSEA
Rocky Jackson, Attorney at Law

State of Washington -- Employment Security Department
Notice To Employer - Claimant's Separation Statement

IMPORTANT: The following claimant has filed a claim for unemployment insurance benefits and has listed you as one of the last employers. Please review to prevent improper payments.

If the claimant's statement below says "lack of work" or "reduced hours due to lack of work" and you agree, you can disregard this statement. If the separation is anything other than "lack of work", please complete and return this form and any other relevant documents by mail or fax. In our decision, we will consider any facts you provide. If we do not hear from you, a decision will be made based solely on the claimant's statement.
This form must be returned by 09/18/2006

OKANOGAN COUNTY
PO BOX 1010

OKANOGAN WA 98840-1010

Return Address:

EMPLOYMENT SECURITY DEPT
VOICE: 1-(877) 504-5607
FAX : (800)301-1796
PO BOX 19019
OLYMPIA WA 985070019

TC: 790 BYE: 09/01/2007 Name: SHANE W JONES
Date Began: 08/01/2000 Last day worked: 08/28/2006 Date of Separation: 08/28/2006

Claimant's separation reason: "DISCHARGED DUE TO DUI OFF DUTY"

Employer's Statement:

Began: 08-01-2000 Last Worked: 08-28-2006 Date Separated: 08-28-2006 Pay Rate: \$3873.35 per (hour/day/etc.)
Payments: Pay in lieu of notice: \$ Vacation pay: \$22.35/hour Accrued: \$ Holiday Pay: \$

Claimant's Job Title/Occupation: FIELD DEPUTY

Check one and explain if separation is other than lack of work or reduced hours due to lack of work: Quit Discharge
 Did not meet standards Labor Dispute Other (explain)

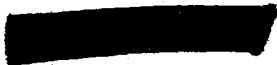
I will have more work on _____ I would like this person on standby Yes No. If yes, dates: _____
(NOTE: Standby can only be granted when the claimant has a definite return to work date that is within four weeks. An employer can request an additional four weeks for a maximum of eight weeks per claim. Claimants on standby are not required to seek work, but are required to accept any suitable work you offer.)

Quit Information:

1. What reason did the claimant give for quitting on the last day? EMPLOYEE WAS TERMINATED FOR COMMISSION OF CRIMES, DUI & MAKING FALSE STATE TO PUBLIC SERVANT & CODE OF ETHICS & POLICY VIOLATIONS
2. Did the claimant state he/she quit for one or more of the following reasons (check all that apply):
 Quit to accept a new offer of work?
 Quit due to illness or disability of: self or family member? If yes, was medical verification provided? Yes or No. Is the claimant eligible for reinstatement yes or No.
 Quit to relocate due to spouse's mandatory transfer for: existing job; new job; or military transfer?
 Quit due to domestic violence or stalking of self or family member?
 Reduction in pay and/or fringe benefits? If yes, by what percentage? _____. Was the reduction: permanent or temporary?
 Reduction in hours of work? If yes, by what percentage? _____. Was the reduction: permanent or temporary?
 Relocation of work site or modification to his/her shift or schedule? If yes, was the relocation: permanent or temporary?
 Alleged safety violations at the work site? If yes, was the violation reported to you? Yes or No
 Alleged illegal activities at the work site? If yes, was problem reported to you? Yes or No
 Religious or moral reasons due to a change in customary job duties? If yes, what was the change? _____
 Other?
Please provide specific details relating to the reason(s) checked (i.e., if change was temporary, until what date, etc.): EMPLOYEE

DID NOT QUIT - HE WAS TERMINATED AS STATED IN #1.

Name: SHANE W JONES



3. Did the claimant pursue any alternatives to resolve any problems, such as transfer, leave of absence, etc.? Yes or No N/A

Discharge Information:

1. What was the final incident that caused the claimant to be discharged? AS STATED ON PAGE 1, JONES WAS TERMINATED FOR COMMISSION OF CRIMES, DWI & FALSE STATE TO PUBLIC SERVANT AND FOR CODE OF ETHICS & POLICY VIOLATIONS.

2. Was the claimant discharged for one or more of the following reasons (check all that apply):

- Insubordination?
- Repeated inexcusable tardiness?
- Dishonesty related to employment?
- Repeated inexcusable absences?
- Deliberate acts that are illegal, provoke violence or violation of laws? If yes, what was the act? DWI-46.01.500, & FALSE STATE TO PUBLIC SERVANT - 9A.76.175
- Violation of a company rule? If yes, what was the rule? CODE OF ETHICS & POLICY VIOLATIONS - SEE REVERSE OF PAGE
- Violations of law while acting within the scope of employment? If yes, what was the law?
- Unable to do the job through no fault of his/her own?
- Other

Please provide specific details relating to the reason(s) checked. (e.g. dates of tardiness/absences, how many warnings, etc.): JONES HAS A DOCUMENTED HISTORY OF POLICY VIOLATIONS, SEE BACK OF THIS PAGE FOR A SPECIFIC LIST OF CODE OF ETHICS VIOLATIONS & POLICY VIOLATIONS.

3. Do you believe the claimant's actions were: deliberate or negligent? (explain) EMPLOYEE CHOSE TO DRIVE DRUNK, LIE TO THE PROSECUTORS, VIOLATE POLICY, VIOLATE CODE OF ETHICS, & BRING DISCREDIT TO OUR OFFICE

4. Could the claimant's actions have caused a potential harm to your business? Yes or No (explain) THE WSP IS THE LARGEST POLICE AGENCY IN THE STATE. THIS IS THE 2ND TIME THIS EMPLOYEE HAS BEEN DISCIPLINED BECAUSE OF HIS ACTIONS - ESPECIALLY TOWARDS THE WSP

5. If a law was violated, will you file criminal charges? Yes or No. Have charges been filed? Yes or No. Where? CHARGES HAVE ALREADY BEEN FILED BY THE WSP - BRIMINGTON DETACHMENT DIST 8

Availability: Explain any reason you feel the claimant is not available for work. VIOLATED THE LAWS OF THE STATE OF OKLAHOMA, VIOLATED THE CODE OF ETHICS, VIOLATED THE POLICIES OF THE OKMULGEE COUNTY SHERIFF'S OFFICE

WAC 192-130-050 provides that a notice be mailed to the employer identified by the claimant as the current or most recent employer. The employer is required to provide information that may affect the claimant's eligibility for benefits. If the employer fails to respond within ten days, the department may allow benefits based on the weight of evidence.

RELIEF OF BENEFIT CHARGES. If you were also one of the claimant's base year employers, you may be eligible for relief of charges to your experience rating if the separation from work was (1) a quit not attributed to the employer or (2) a discharge for work-connected misconduct. Please mark the appropriate box: Claimant quit, not employer's fault. Claimant was discharged for misconduct.

Name: JOE SORDAN Title: UNDERSHERIFF Business Name: OKMULGEE COUNTY SHERIFF'S OFFICE

#2

OCSO Policy 1-2 The Code of Ethics.

- I will keep my private life unsullied as an example to all; maintain courageous calm in the face of danger, scorn or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the laws of the land and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

OCSO Policy 16-1-1 Code of Conduct.

- Subsection 1 Member, whether on duty or off, shall be governed by the ordinary rules of good conduct and behavior and shall not commit any act or omission tending to bring reproach or discredit upon the Sheriff's Office.
- Subsection 6 No member off duty shall drink alcohol to an extent that would render the member unfit to report for the next assigned shift or which results in the commission of an obnoxious or offensive act that may bring discredit upon the Sheriff's Office.
- Subsection 21 Members shall obey the laws of the United States and the State of Washington, Ordinances of Okanogan County and lawful orders of the Court.
- Subsection 36 Members shall not use their official position or identification for personal financial gain, or obtaining privileges not otherwise available to them except in the performance of duty or to avoid consequences of unlawful acts.



OKANOGAN COUNTY SHERIFF'S OFFICE

FRANK T. ROGERS, SHERIFF

ADMINISTRATION, INVESTIGATION AND CIVIL
123 - 5TH AVENUE NORTH, ROOM 200
OKANOGAN, WA 98840
509-422-7200 FAX: 509-422-7217

CORRECTIONS AND COMMUNICATIONS
149 - 4TH AVENUE NORTH
OKANOGAN, WA 98840
509-422-7200 FAX: 509-422-7236



August 28, 2006

Deputy Jones
Okanogan County Sheriff's Office

On August 28th, 2006, Per POL-16-3, your pre-disciplinary hearing was held at the Sheriff's Office conference room. Present were Sergeant Mike Worden, Deputy Shane Jones, OCSEA Guild Representative Mike Murray, OCSEA Guild Representative Deputy Kevin Newport and I.

On August 22nd, 2006 Sergeant Mike Worden completed an internal investigation regarding the following policy violations and criminal acts that were alleged to have been committed by you.

Violations:

1. OCSO Policy 1-2 The Code of Ethics.

- I will keep my private life unsullied as an example to all; maintain courageous calm in the face of danger, scorn or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the laws of the land and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

2. OCSO Policy 16-1-1 Code of Conduct.

- Subsection 1 Member, whether on duty or off, shall be governed by the ordinary rules of good conduct and behavior and shall not commit any act or omission tending to bring reproach or discredit upon the Sheriff's Office.
- Subsection 6 No member off duty shall drink alcohol to an extent that would render the member unfit to report for the next assigned shift or which results in the commission of an obnoxious or offensive act that may bring discredit upon the Sheriff's Office.
- Subsection 21 Members shall obey the laws of the United States and the State of Washington, Ordinances of Okanogan County and lawful orders of the Court.
- Subsection 36 Members shall not use their official position or identification for personal financial gain, or obtaining privileges not otherwise available to them except in the performance of duty or to avoid consequences of unlawful acts.

Criminal Acts:

1. Driving Under the Influence, RCW 46.61.502
 - (1) A person is guilty of driving while under the influence of intoxicating liquor or any drug if the person drives a vehicle within this state:
 - (a) And the person has, within two hours after driving, an alcohol concentration of 0.08 or higher as shown by analysis of the person's breath or blood made under RCW 46.61.506
 - (5) A violation of this section is a gross misdemeanor.

ADMINISTRATION
JOSEPH SOMDAY
Undersheriff

INVESTIGATIONS
DAVE RODRIGUEZ
Chief Criminal Deputy

COMMUNICATIONS
SHAWN MESSINGER
Chief Special Operations Deputy

CORRECTIONS
NOAH STEWART
Chief Corrections Deputy

EMERGENCY MANAGEMENT
SCOTT MILLER
Homeland Security Coordinator

CIVIL
BETH BARKER
Chief Civil Deputy

Criminal Acts (Cont.):

2. Making a false or misleading statement to a public servant, RCW 9A.76.175
A person who knowingly makes a false or misleading material statement to a public servant is guilty of a gross misdemeanor. "Material statement" means a written or oral statement reasonably likely to be relied upon by a public servant in the discharge of his or her official powers or duties.

The pre-disciplinary hearing showed that you violated the following policies and procedures:

- POL-1-2, The Code of Ethics
- PRO-16-1-1 Code of Conduct, sections 1, 6, 21, and 36.

The pre-disciplinary hearing also showed that you committed the following criminal acts:

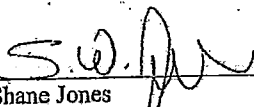
- Driving Under the Influence
- Making a false or misleading statement to a public servant

The pre-disciplinary hearing also showed that you lied not once but twice to the trooper when asked about the presence of a weapon in the vehicle. You could have been charged with making a false or misleading statement to a public servant as your statement to Trooper Wood, which is a material statement that is reasonably likely to be relied upon by a public servant, was a false statement. This law became necessary for the immediate preservation of public safety.

Pre-disciplinary hearings are administrative hearings and preponderance is the level of proof. It is very evident to me that that level of proof has been met and exceeded. You also have a documented history of prior discipline for violations of the Code of Conduct. Law enforcement officers are entrusted and charged with the responsibility and duty to protect and serve society, it is essential that they command the respect of those whom they seek to protect. This public trust requires that law enforcement officers demonstrate the highest degree of character and integrity. Your recurring actions once again harmed the Okanogan County Sheriff's Office by violating the law enforcement's code of ethics and code of conduct. As a law enforcement officer you are held to the highest regard to enforce the law. Your behavior and misconduct was intentional for which there is no excuse.

Therefore it is my decision that you are to be terminated effective immediately, 08-28-06 at 1500.

You are also hereby informed that you have the right to appeal this decision.



Shane Jones

8-28-06
Date

 02

Undersheriff Joe Somday

08-28-06
Date

From: Joe Somday
To: Carol Baines
Date: 8/28/2006 4:49:47 PM
Subject: Shane Jones

Carol,

As of 08-28-2006 at 1500 Shane Jones is no longer an employee of the Sheriff's Office.

Undersheriff Joe Somday

From: Joe Somday
To: Mandy Hancock; Randy Clough
Date: 8/28/2006 3:53:10 PM
Subject: Shane Jones

Shane Jones is no longer an employee of this office.

Please disable Shane Jones access to the computer system(s) including his e-mail, voice mail and VPN access. Please do not delete the account(s) as we may need to access them at a later date.

Thank you - Joe Somday

CC: Frank Rogers

From: Joe Somday
To: Brenda Crowell; Lalena Johns
Date: 8/28/2006 3:53:55 PM
Subject: Shane Jones

Shane Jones is no longer an employee of this office.

Please disable Shane Jones scan card.

Thank you - Joe Somday

CC: Frank Rogers

From: Lalena Johns
To: 'Joe Somday'
Date: 8/28/2006 3:56:11 PM
Subject: RE: Shane Jones

It is as good as done.

-----Original Message-----

From: Joe Somday
Sent: Monday, August 28, 2006 3:53 PM
To: Brenda Crowell; Lalena Johns
Cc: domain.po.frogers
Subject: Shane Jones

Shane Jones is no longer an employee of this office.

Please disable Shane Jones scan card.

Thank you - Joe Somday

WASHINGTON STATE CRIMINAL JUSTICE TRAINING COMMISSION
 THIS FORM IS TO BE COMPLETED & FORWARDED TO THE CJTC WITHIN 15 DAYS OF HIRE OR TERMINATION
 MAIL OR FAX TO:

19010 1ST AVE SOUTH, BURIEN, WA 98148 FAX: (206) 439-3859
 This form and information can be found on our website at www.cjtc.state.wa.us



NOTICE OF OFFICER HIRE / TERMINATION

HIRE		2. TERMINATION	
AGENCY:		AGENCY: Okanogan County Sheriff's Office	
OFFICER NAME:		OFFICER NAME: Shane W. Jones	
DATE OF BIRTH:	<input type="checkbox"/> FEMALE <input type="checkbox"/> MALE	DATE OF BIRTH: 06-11-1971	<input type="checkbox"/> FEMALE <input checked="" type="checkbox"/> MALE
SOCIAL SECURITY:		SOCIAL SECURITY: [REDACTED]	
HIRE DATE:	HIRE DATE: 09-01-2000	TERMINATION DATE:	TERMINATION DATE: 08-28-2006
PREVIOUS LAW ENFORCEMENT AGENCY (if applicable):		TERMINATION TYPE:	
DATES EMPLOYED: (from) (to)		<input type="checkbox"/> RESIGNED <input checked="" type="checkbox"/> INVOLUNTARY	
		<input type="checkbox"/> MEDICAL <input type="checkbox"/> RETIRED <input type="checkbox"/> DECEASED	

This section must be completed when reporting any termination.

Is this agency aware of conduct that may violate RCW 43.101.105?

YES NO

If yes, you are required to provide a detailed description of the misconduct AND to complete items I and II below.

Section 43.101.010 of the Revised Code of Washington:

7) "Discharged for disqualifying misconduct" means terminated from employment for (a) Conviction of (i) any crime committed under color of authority as a peace officer, (ii) any crime involving dishonesty or false statement within the meaning of Evidence Rule 609(a), (iii) the unlawful use or possession of a controlled substance, or (iv) any other crime the conviction of which disqualifies a Washington citizen from the legal right to possess a firearm under state or federal law; (b) conduct that would constitute any of the crimes addressed in (a) of this subsection; or (c) knowingly making materially false statements during disciplinary investigations, where the false statements are the sole basis for the termination.

8) A peace officer is "discharged for disqualifying misconduct" within the meaning of subsection (7) of this section under the ordinary meaning of the term and when the totality of the circumstances support a finding that the officer resigned in anticipation of discipline, whether or not the misconduct was discovered at the time of resignation, and when such discipline, if carried forward, would more likely than not have led to discharge for disqualifying misconduct within the meaning of subsection (7) of this section.

Officer's last known mailing address: **123 - Pryor Drive, Pateros, WA 98812**

Agency investigative contact person:
 (name, phone, e-mail) **Beth Barker, Chief Civil Deputy, 509-422-7200 ext. 7773, bbarker@co.okanogan.wa.us**

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.
 E-mail address

Appointing Official name & title (PRINT PLEASE)

Chief, Sheriff, Mayor, etc)

Sheriff Frank T. Rogers

frogers@co.okanogan.wa.us

Signature of above

Frank T. Rogers

City
Okanogan

State
WA

Date

08-28-06



WASHINGTON STATE
CRIMINAL JUSTICE TRAINING COMMISSION

Michael D. Parsons, Ph.D. Executive Director

19010 1st Avenue South • Burién, WA 98148 • Phone: 206/835-7300 • www.cjtc.state.wa.us

September 12, 2006

Sheriff Frank Rogers
Okanogan County Sheriff's Office
123 - 5th Avenue North, Room 200
Okanogan, WA 98840

Dear Sheriff Rogers,

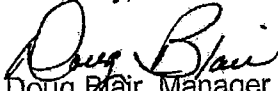
The Washington State Criminal Justice Training Commission (WSCJTC), Division of Peace Officer Certification, has completed the review of the termination case of Deputy Shane Jones. After careful consideration and thorough review, the WSCJTC is declining to take action against Mr. Jones' Peace Officer Certification.

The reason for this decision is based upon the facts that the criminal activity and other actions involving untruthfulness to a law enforcement officer occurred while Deputy Jones was in an off-duty capacity.

If you disagree with this decision and would like to have it reviewed, WAC 139-06-040 (2) allows the opportunity for review of this decision by the Chair of the Commission. Such a request for review must be made in writing within fourteen (14) days of the mailing of this notification, by mailing this notification not to proceed and your request for a review to:

Thomas Metzger, Commission Chair
Prosecuting Attorney
Pend Oreille County
Post Office Box 5070
Newport, WA 99156

Sincerely,


Doug Blair, Manager
Peace Officer Certification

C: Mr. Shané Jones

Mission: Enhance the quality of life and public safety in Washington communities through innovative training and education of criminal justice personnel and enforcement of certification standards.

Values: Professionalism • Integrity • Accountability

BEFORE SHERMAN B. KELLAR, Esq., ARBITRATOR

IN THE MATTER OF THE ARBITRATION)	AWARD
BETWEEN)	
)	
Okanogan County Sheriff's Employees' Association,)	
)	
)	Shane W. Jones
ASSOCIATION)	Termination
AND)	
)	
County of Okanogan, Washington)	
)	
EMPLOYER)	

After the careful consideration of all oral arguments, evidence submitted, briefs filed and for the reasons set forth in the foregoing opinion, it is awarded:

1. The Grievance is allowed subject to the following conditions:
 - A. The Grievant is to be reinstated to the Police Officer position that he held at the time of his termination;
 - B. Grievant shall forfeit four months' pay including all attendant benefits and be entitled to all back pay with full benefits after said deduction until his reinstatement;
2. Pursuant to Article 20.3 of the Contract, the Arbitrator's fees and charges shall be borne equally by the County and the Association;
3. The Arbitrator, pursuant to the stipulation of the parties, will retain jurisdiction for a period of forty-five days from the date of the award to assist the parties, if needed, in its implementation.

DATED: This 11th day of October, 2007



Sherman B. Kellar, Esq.
Arbitrator

BEFORE SHERMAN B. KELLAR, Esq., ARBITRATOR

IN THE MATTER OF THE ARBITRATION)	OPINION
BETWEEN)	
)	AND
Okanogan County Sheriff's Employees' Association,)	
)	AWARD
)	
ASSOCIATION)	Shane W. Jones
AND)	Termination
)	
County of Okanogan, Washington)	
)	
EMPLOYER)	

HEARING SITE: Okanogan County Offices
Commissioner's Conference Room
123 5th Avenue N.
Okanogan, WA 98840

HEARING DATES: June 6-8, 2007

ARBITRATOR: Sherman B. Kellar, Esq.
1517 S.W. 66th Avenue
Portland, Oregon 97225

APPEARING FOR THE ASSOCIATION:

Aaron D. Jeide, Esq.
Cline & Associates
1001 Fourth Avenue, Suite 2301
Seattle, WA 98154

APPEARING FOR THE EMPLOYER:

Rocky L. Jackson, Esq.
Menke Jackson Beyer Eloffson Ehlis & Harper, LLP
807 North 39th Avenue
Yakima, WA 98902

I. INTRODUCTION

This matter arose out of a grievance filed on behalf of Shane W. Jones ("Grievant" herein) by the Okanogan County Sheriff's Association ("Association" herein) which alleged the discharge of Grievant by the County of Okanogan ("Employer" herein) violated the provisions of the Collective Bargaining Agreement in effect between the parties from January 1, 2006 through December 31, 2007 ("Contract" herein).

The hearing in this matter was held before Arbitrator, Sherman B. Kellar, Esq., who was selected pursuant to the provisions of the Contract.

The parties stipulated that there were no procedural or substantive objections to the arbitrability of the matter submitted. The parties stipulated to the issues before the Arbitrator. A digital recording of the hearing was made and later stipulated by the parties to constitute an official transcript of the proceedings.

Each of the parties was afforded a full and complete opportunity to make opening statements and to present testimony and documentary evidence in support of their respective positions. Documentary evidence was presented and sworn witnesses were examined and cross examined.

Both sides opted to present briefs at the close of the evidentiary portion of the hearing. Briefs were received on August 2, 2007. Upon receipt of the briefs the hearing was closed and the case stood fully submitted for decision as of that date subject to the stipulation by the parties that the Arbitrator retain jurisdiction for a period of forty-five (45) days, subsequent to the date of his opinion, in the event the remedy, if any, requires implementation by the parties.

The Arbitrator has carefully considered all of the testimony and reviewed the exhibits presented as well as the positions propounded by the parties in their opening statements and post-hearing briefs. Based upon these considerations, the Arbitrator decides and awards as follows:

II. WITNESSES

A. Employer's Witnesses

1. Joe Somday, Under Sheriff, Okanogan County Sheriff's Office
2. Robert Wood, Trooper, Washington State Patrol
3. Ronald Mead, Trooper, Washington State Patrol
4. Frank T. Rogers, Sheriff, Okanogan County
5. Mike Worden, Sergeant, Patrol Deputy, Okanogan County Sheriff's Office

B. Association's Witnesses

1. Morris Regan, Chemical Dependency Counselor
2. Marci Ward, Communications Deputy, Okanogan County 911
3. Chris Farley, Deputy, Okanogan County Sheriff's Office
4. Sergeant Harrison, Field Sergeant, Okanogan Sheriff's Office
5. Kevin Newport, Field Deputy, Okanogan's Sheriff's Office. Guild President
6. Shane Jones, Grievant, Deputy Okanogan County Sheriff's Office

III. EXHIBITS

Employer Exhibits

- E-1. Notice of Termination dated August 28, 2006
- E-2. Ltr to Deputy Shane Jones from Sgt. Mike Worden re: Notice of Internal Investigation, 06-003, Dated August 21, 2006
- E-3. Ltr to Undersheriff Joe Somday from Sgt. Mike Worden re: 06-003 Investigation, Findings, Recommendation, dated August 22, 2006
- E-4. Ltr to Deputy Shane Jones from Sgt. Mike Worden re: 06-003 Notice of Hearing/Summary of Allegations, dated August 23, 2006.
- E-5. Washington State Patrol DUI Report, dated August 13, 2006
- E-6. Ltr to Undersheriff Joe Somday from Kevin Newport re: Loudermill Hearing Rebuttal Arguments for Shane Jones, dated August 28, 2006

- E-7. Letter of Reprimand to Deputy Shane Jones, from Sergeant Mike Worden, dated January 30, 2006
- E-8. Code of Ethics and Code of Conduct
 - Code of Ethics signed by Shane Jones - September 1, 2000
 - Code of Ethics signed by Shane Jones - January 1, 2003
- E-9. Standardized Field Sobriety Training Certificates
 - granted May 14, 1999
 - granted April 12, 2006
 Drugs that Impair Driving Training Certificate
 - granted April 12, 2006
- E-10. Email to Dave Rodriguez, Frank Rogers, Joe Somday, from Ernie Gahimer re: Shane Jones DUI, dated 08/13/2006
- E-11. Ltr to Deputy Shane Jones from Undersheriff Joe Somday re: Administrative Leave, dated August 21, 2006
- E-12. Ltr to Deputy Shane Jones from Sgt. Mike Worden re: Notice of Internal Investigation, 06-003, dated August 21, 2006
- E-13. Ltr to Shane Jones and Kevin Newport from Frank Rogers re: Grievance Step 2 - Shane Jones Termination, dated September 22, 2006
- E-14. OCSO Field Schedule August 6-12, 2006
- E-15. Transcript of Pre-Disciplinary Hearing - August 28, 2006
- E-16. Notice of Termination to Deputy Emigh, dated February 19, 2004
- E-17. *Wenatchee World* article entitled: Deputy who poached is fired: Investigation concludes 19-year sheriff's office veteran was dishonest, dated February 24, 2004
- E-18. *Wenatchee World* article entitled: Okanogan sheriff's sergeant arrested: High school burglary investigation finds evidence against Waters, dated June 9, 2006
- E-19. Ltr to Sheriff Frank Rogers from Richard Waters re: Letter of Resignation, dated June 15, 2006

Association Exhibits

- A-1. Grievance Documents
- A-2. Policy: POL-16-2 Disciplinary System, Disciplinary Actions
- A-3. Disciplinary Documents February 2004 re: Control Room Operator, Nancy Lewis.
- A-4. Expectations Grievance Documents re: October 2005 Grievance re: Shane Jones
- A-5. Policy: POL-26-1 Internal Affairs Component
- A-6. AA Treatment File: re: Shane Jones, Grievant
- A-7. Field Training Records

- A-8. 2006 Training Seminar
- A-9. Rocky Jackson's PDA Response
- A-10. Shane Jones, Grievant, Personnel File
- A-11. Deferred Prosecution Materials

IV. ISSUES

1. Did the Employer, Okanogan County Sheriff's Office, have Just Cause to terminate Shane Jones on August 28, 2006?
2. If not, what is the appropriate remedy?

V. RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

**AGREEMENT
By and Between**

**OKANOGAN COUNTY SHERIFF EMPLOYEE ASSOCIATION
(Commissioned)
and
OKANOGAN COUNTY
JANUARY 1, 2006 THROUGH DECEMBER 31, 2007**

...

ARTICLE 18 - MANAGEMENT RIGHTS

18.1 Retention of Rights

Except as otherwise expressly and specifically limited by the terms of this Agreement, the County retains all of its customary, usual and exclusive rights, decision making prerogatives, functions, and authority connected with or in any way incidental to its responsibility to manage its affairs or any part thereof. The County retains all prerogatives, functions and rights not specifically limited by this Agreement.

18.1.1 The County shall have no obligation to negotiate with the Union with respect to any decision, in the exercise of its discretion, regarding the below listed subjects. The exercise of any is not subject to the grievance procedure, to arbitration, or to bargaining during the term of this Agreement. Without limitation, the parties agree to the following examples are within the exclusive prerogatives, functions and rights of the County.

1. To establish the qualifications for employment and to employ employees;
2. To determine the mission policy and set forth all standards of service offered to the public by the County and the Sheriff's Department;
3. To determine the means and methods needed to carry out departmental operations and service;
4. To introduce equipment and facilities;
5. To take whatever action is necessary to carry out the mission of the County in emergencies; and
6. To determine the department budget.

18.2 Subject to the rights and obligations of the parties set forth in RCW 41.56, the County in addition retains the following rights:

1. To establish the makeup of the Sheriff Department's work force and make changes from time to time, including the number and kinds of classifications, and direct the work force toward the organizational goals established by the County;
2. To plan, direct, schedule, control, and determine the operations or services to be conducted by the employees of the Sheriff Department and County;
3. To approve and schedule all vacations and other employee leaves;
4. To assign or transfer employees with the Department or police-related functions;
5. To assign work to, and schedule employees;
6. To lay off employees as deemed necessary by the County; and
7. To eliminate equipment and facilities.

The inclusion of numbers 1 through 7 of Section 18.2 shall not be interpreted as a waiver by the Association of any bargaining rights or obligations under RCW 41.56

18.3 Nothing in this Agreement shall be interpreted to detract or circumscribe the trust placed in the County Commissioners and/or other elected officials and/or department heads and the rights and obligations owed thereby to the citizenry.

...

ARTICLE 20 - GRIEVANCES AND ARBITRATION

- 20.1 A grievance is defined an alleged violation of the terms and conditions of this Agreement. If any such grievance arises, it shall be submitted to the following grievance procedure. Time limits of procedures for processing a grievance pursuant to this Grievance Procedure may be extended or modified only by mutual written consent of the parties hereto.
- 20.2 In the processing disposition and/or settlement of any, grievance, the Association shall be the exclusive representative of the employee(s). The Association may make the determination of the merit or validity of employee or Association grievances, provided that employees may pursue grievances on an individual basis up through Step 2, and any settlement of such grievances shall be consistent with this Agreement. Prior to the submission of the grievance, the Association and/or the employee shall elect either the grievance procedure or the Okanogan County Civil Service Commission as the remedy of choice. Once decided, the Association and/or the employee shall submit the grievance through the elected procedure and, once the grievance has been initiated in the elected procedure, there shall be no other recourse for the resolution of that grievance.
- 20.3 A grievance settled under any step hereof shall be binding on both parties and the employee(s) provided that any settlement are consistent with RCW 41.56.080.
- 20.4 Any grievance shall be resolved in the following manner:

Step 1:

A representative of the Association, on behalf of the aggrieved employee, or the employee shall notify the Employer of the nature of the grievance with fourteen (14) calendar days of the grievant's first knowledge of the occurrence which gave rise to the grievance by written notification to the Division Head. The Division Head and the employee and/or the Association shall attempt to settle the matter. The Division Head shall respond to the employee and the Association President in writing with fourteen (14) calendar days of receipt of the grievance.

Step 2:

If the grievance is not settled in Step 1, it shall be submitted in writing within seven (7) calendar days after the Step I decision to the Sheriff and to the President of the Association. Upon receipt of the written grievance the Sheriff or designated representative shall within fourteen (14) calendar days meet with the Association

and/or employee in an attempt to settle the grievance. The rejection or settlement of the grievance shall be in writing to the employee and the Association President within seven (7) calendar days after the meeting. The result from Step 2 shall be final for grievances pursued by individuals without the assistance of the Association. The right to proceed to arbitration pursuant to Step 3 applies only to the Association.

Step 3:

- a. If matter is not resolved at Step 2, the Association shall within thirty (30) calendar days of the Step 2 decision request arbitration. Upon demand for arbitration, both parties shall immediately petition the Washington State Public Employment Relations Commission (PERC) for the names of seven (7) arbitrators and within seven (7) calendar days from receipt of such list of names, the two parties shall select one name on the list by alternately striking a name until one remains. The first strike shall be determined by lot. This process for selecting an arbitrator need not be followed if both parties agree on any person as impartial arbitrator.
 - b. The grievance shall then be presented before an arbitrator who shall hear both parties as soon as practical on the disputed matter and shall render a decision within thirty (30) calendar days of the conclusion of the hearing.
 - c. The decision of the arbitrator shall be final and binding upon the parties to the grievance provided the decision does not involve action by the Employer which is beyond its jurisdiction nor shall the arbitrator have the authority to amend, alter or modify this Agreement and its terms shall be limited to the interpretation and application of this Agreement.
 - d. Any grievance submitted to arbitration may be settled by the parties prior to the arbitration hearing or decision or withdrawn from the arbitration process by the parties submitting the grievance to the Step 3 procedure.
 - e. Charges submitted by the arbitrator shall be borne equally by the County and the Association.
- 20.5 Nothing herein shall be construed as a limitation on the right of an individual employee to pursue a complaint or grievance through the management chain of command (i.e., supervisor, mid-level manager, and then the Sheriff) without the intervention of the Association, provided that any result shall be consistent with the terms of this collective bargaining agreement, and further provided that, the association has been

given reasonable opportunity by the employer to be present at any initial meeting called for the resolution of such grievance.

ARTICLE 21 - DISCIPLINE AND INVESTIGATIONS

- 21.1 It is agreed that the County has the right to discipline, suspend or discharge any employees for just cause. When a discipline notice is served upon the employee, a copy will also be served upon the Association President.
- 21.2 Any employee who becomes the subject of a criminal investigation shall have all rights accorded by the State and Federal constitutions and Washington law.
- 21.3 The interview of an employee shall normally be at a reasonable hour for the employer, preferably when the employee is on duty, unless the exigency of the interview dictates otherwise.
- 21.4 The employee will be required to answer any questions involving matter under administrative investigation. If employee refuses to answer questions related to public job performance in the matter under investigation, the employer will read the following to employee:
“You are about to be questioned as part of an internal investigation being conducted by the Sheriff’s Department. You are hereby ordered to answer the questions, which are put to you, which related to your conduct and/or job performance and to cooperate with this investigation. Your failure to cooperate with this investigation can be the subject of disciplinary action in and of itself, including dismissal. The statements you make or evidence gained as a result of this required cooperation may be used for administrative purposes but shall not be used or introduced into evidence in a criminal proceeding.”
- 21.5 Interviewing shall be completed within a reasonable time and shall be done under circumstances devoid of intimidation or coercion. The employee shall be afforded an opportunity and facilities to contact and consult with an Association representative before being interviewed, and to be represented by the Association representative to the extent permitted by law. The Association representative shall not have the right to interfere with the interview or answer questions for the employee. The employee shall be entitled to such reasonable intermissions as the employee shall request for personal necessities, meals, telephone calls, consultation with the Association representative, and rest periods.

- 21.6 All interviews shall be limited in scope to activities, circumstances, events, conduct or actions which pertain to the incident which is the subject of the investigation. Nothing in this section shall prohibit the Employer from questioning the employee about information which is developed during the course of the interview.
- 21.7 Investigations shall be concluded within a reasonable period of time. Within a reasonable period after the conclusion of the investigation and no later than seventy-two (72) hours prior to a predisciplinary hearing, the employee shall be provided a written summary of the allegations, findings of the investigation, any supervisors recommendation for discipline, and a copy of the entire investigative report.

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OSCO Policy 16-1-1 Code of Conduct subsections 1, 21 and 36

1. Member, whether on duty or off, shall be governed by the ordinary rules of good conduct and behavior and shall not commit any act or omission tending to bring reproach or discredit upon the Sheriff's Office.

6. No member off duty shall drink alcohol to an extent that would render the member unfit to report for the next assigned shift or which results in the commission of an obnoxious or offensive act that may bring discredit upon the Sheriff's Office.

21. Members shall obey the laws of the United States and the State of Washington, Ordinances of Okanogan County and lawful orders fo the Court.

36. Members shall not use their official position or identification for personal financial gain, or obtaining privileges not otherwise available to them except in the performance of duty or to avoid consequences of unlawful acts.

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CODE OF ETHICS

"As a Law Enforcement Officer, my fundamental duty is to serve mankind; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the constitutional rights of all men to liberty, equality and justice.

I will keep my private life unsullied as an example to all; maintain courageous calm in the face of danger, scorn or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the laws of the land and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

I will never act officiously or permit personal feelings, prejudices, animosities or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law and courteously and appropriately without fear or favor, malice or violence and never accepting gratuities.

I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of law enforcement. I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession law enforcement.”

.....

VI. FACTS

The essential and pertinent facts in this matter are uncontradicted. After several years of reserve duty with the Okanogan County as well as other counties, Grievant secured a full time job with the City of Blaine Police Department. He then attended the Police Academy in 1996. In 2000, Grievant was hired by the Okanogan County Sheriff Department and has been a full time officer of the County until his termination on August 28, 2006. During his tenure with Okanogan County, Grievant was assigned to be a special canine narcotics officer in 2002 and continued in that position until his termination. During his tenure as a canine narcotics officer he was appointed to Master Handler which is the highest level attainable. As a result, he has trained dogs throughout the state to serve as a team with canine narcotics detectives. In addition, he was a member of the Sheriff's office scuba diving rescue team and was also a member of the Sheriff's office honor guard. Prior to coming to work for Okanogan, Grievant was in the Navy for four years aboard the aircraft carrier, *USS Nimitz*. He was assigned as a Master at Arms, which is the equivalent of a military police onboard ship.

During his duties as an officer with the Okanogan County Sheriff's Department, Grievant was trained in arresting and recognizing drug-impaired and drunk drivers utilizing the standardized field sobriety test.

On August 13, 2006, Grievant was spotted by State Trooper Wood driving excessively, 62 MPH in a 50 MPH zone and 62 MPH in a 40 MPH zone. He was also crossing the center line. Trooper Wood then pulled Grievant over. He approached the subject's car using the proper procedure. The Trooper noted a strong odor of alcohol in Grievant's car and asked him if he had been drinking. Grievant stated, "No". Trooper Wood again asked Grievant how much he had been drinking and Grievant said, "three beers". During the pre-arrest questioning Trooper Wood was out of his car and in front of Grievant. On three occasions during the initial questioning Grievant attempted to return to his car but was intercepted each time by Trooper Wood.¹

At that time Trooper Wood asked Grievant if he had any weapons on him or in his car. Grievant answered 'no' to both inquiries. During the interrogation of the Grievant, Trooper Wood called for backup because his portable battery was dead. Sergeant Mead was called to the scene. Trooper Wood then resumed his Field Sobriety testing.

At the end of these tests Trooper Wood concluded that Grievant's performance of the SFST's was not satisfactory and he was obviously impaired. Trooper Wood then proceeded to advise Grievant that he was under arrest for DUI, handcuffed him and put him in the back of his patrol car. At this point in the proceedings, Sergeant Mead arrived and spoke with Grievant asking him if he had any weapons in the car, Grievant replied that he did but would not tell him where. Sergeant Mead then searched Grievant's car and found a black bag on the front seat. The bag was unzipped and in it was Grievant's Glock 40 Caliber pistol with the

¹ Trooper Wood testified he has been involved in well more than 100 DUIs arrests in his career. He further testified that Grievant's attempts to return his car made him very nervous. The latest shooting of a WSP involved a trooper who let his stop return to his car where he got a gun and fatally shot the trooper.

holster flap open. It was fully loaded with a one round in the chamber and 14 rounds in the magazine.

During the course of the interviews by the Troopers, Grievant answered many questions with the trite obscenity, "I am f_____ed". Two Breathalyzer readings were conducted on the Grievant. These read .150 and .139. The legal limit in the State of Washington is .08.

Trooper Wood testified at the hearing that Grievant's conduct initially was very uncooperative. Trooper Wood testified that it improved somewhat with the appearance of Sergeant Mead on the scene and the confiscation of Grievant's sidearm.

Early on in the Pre-Arrest Screening process, Grievant told Trooper Wood that he was a deputy sheriff, had ID and was stationed in Okanogan. Sergeant Mead testified at the hearing that from the conversation he had with Grievant as well as his attitude there was no doubt in his mind that Grievant not only wanted, but felt he was entitled to, preferential treatment as a matter of his position as a deputy sheriff. At one point Grievant told Sergeant Mead some of the things that he had done with regard to a drug bust which should warrant some professional courtesy. Trooper Mead told Grievant that in order to warrant professional courtesy one must act as a professional and to this point Grievant's actions were not remotely close to being professional. Exhibit E-5.

Grievant's employment record indicates that during his tenure with the County he was issued one written reprimand. This discipline resulted from a situation where Grievant responded to a call asking for assistance at a potential drug bust in process by the Northwest Task Force Team. Before Grievant arrived at the scene Grievant contacted Sergeant Wilson and was notified a WSP K9 team had arrived and conducted a search and his assistance was no longer required. After Grievant cleared the scene, he was contacted during a roadside by Trooper Couchman who learned that Grievant was upset. K9 Trooper Woodside then contacted Grievant and called him back to the scene. Trooper Woodside said Grievant was obviously "pissed" and appeared ready to fight as his fists were clenched and his jaw tight.

Grievant was irate that WSP K9 handler Trooper Woodside was working in what Grievant thought to be his territory. Sergeant Worden said that Trooper Woodside told him during his interview that he let Grievant vent on him. Trooper Woodside also told Sergeant Worden that he had never been subjected to such behavior by any other officer that he had ever worked with or been around. On the scene, Trooper Anderson stated that he was surprised at Grievant's actions and his statement that he hated the WSP and would refuse to work them any longer. The date of the reprimand was January 30, 2006. Exhibit E-7.

There were several incidents in which other officers counseled Grievant regarding his aggressive actions. Undersheriff Somday counseled Grievant about three specific instances. None of those, however, were reduced to writing or actually appear in his personnel file.

VII. ASSOCIATION'S POSITION

The Association asserts the evidence was clear that the Employer in this matter was lying in wait to find an excuse to terminate the Grievant. The opportunity presented itself when the Grievant was charged with a DUI.

It was established again from the evidence that there was clearly disparate treatment with respect to the manner in which other employees who had a history of like infractions were treated. Their conduct did not lead to termination. The Association alleges that it was necessary to find additional charges to support termination after the off-duty DUI. In this respect they assigned a member of the department who was known to have issues with, and a dislike for Grievant. As a result, the investigation was clearly biased against Grievant with a concerted effort to construe ambiguous facts against him. These facts clearly had explanations which were reasonable and benign.

The Association continues by asserting that there was no just cause to discipline the Grievant in this matter. The "Seven Tests" of Just Cause as enunciated in Arbitrator's Daugherty's decision are applicable. Not only applicable, asserts the Association, but with respect to the *Seven Tests* there are at least nineteen factors which come to play in a direct

or collateral manner in judging the issue of whether the Grievant was afforded Just Cause in this matter. According to the Association, any one of those factors, if violated, would be sufficient to rescind Grievant's termination.

The Association then addresses the issue of the burden of proof and the quantum of evidence that should govern in this matter. Because the allegations contained potential criminal activity the burden of proof is clearly beyond a reasonable doubt. However, the Association contends, even if the burden of proof is a mere preponderance of the evidence, the Employer has simply failed to carry even that burden.

Pursuing further, the Just Cause requirements, the Association points out that the Grievant was not given proper notice of the charges against him at the time he was disciplined. In this respect, the County in giving notice to Grievant left him guessing as to what particular facts support the alleged violations in this matter.

The investigation against Grievant was significantly flawed in light of the known issues between the Grievant and the officer selected to do the investigation. There has been a history of conflict between the two of them and it was reflected in the unfair and shoddy manner in which the investigation was conducted by Sergeant Worden.

As a result of the bias in the investigation that was not abstract but real and substantial, the consequences resulted in Grievant being discharged for unproved allegations. The County has an obligation to prove all of the allegations against Grievant, not just one or a few. The only allegation proven was the DUI. Just Cause requires that there be a fair investigation. The County clearly comes up short in this respect.

The issue with the pistol was nothing but an attempt to create charges to justify the termination. None of the arresting officers indicated any intent to charge Grievant with a crime because of the issue with the pistol. The arresting officers, unlike the County, understood Grievant's saying things inaccurately because of his impaired condition. As such there could be no criminal aspect associated with the discourse on the pistol.

In like manner the County has failed to prove that Grievant tried to illicit certain

favors because he was a member of the County Police force.

The Association contends that Grievant's termination in this situation is clearly disparate treatment when compared to the discipline imposed on Nancy Lewis. In her case she came to work with the smell of alcohol on her breath. She lied several times first by denying she had been drinking then admitting to drinking on the job. She was sent home with instructions to seek alcohol treatment.

This amounts to a summary of the shortcomings in the County's investigation and treatment of Grievant. The conclusion must be that the entire process with respect to the investigation and the ultimate penalty, was clearly not justified based on the lack of proven facts. As a result, there is not a modicum of evidence which would justify the termination of this Grievant.

In conclusion, the Association argues that due to the numerous violations of the principles of just cause, committed by the County, Grievant should be reinstated and allowed to pursue his life's passion as a deputy sheriff.

The above is a condensation of the Association's Summary of Argument. The Association continues on to produce a legal tome consisting of eighty-seven pages of text. Obviously, this needs to be condensed into a workable piece of writing. Accordingly, I will address the bold-faced items that appear in the brief under "Legal Argument" and are not redundant with a one or two sentence condensation of each.

The Association asserts that Just Cause is made up of many tests of cause. The Association, underneath this subtitle, sets out the seven tests that many years ago were enunciated in *Enterprise Wire*. They are so firmly ingrained into the arbitration process that there is no need to recite them at this point. They exist and are individual tests which need to be passed in order to warrant Just Cause for a termination.

The Association addresses the burden of proof and argues that the quantum required in this situation needs to be beyond a reasonable doubt or at least by clear and convincing evidence. The Association discusses the requirements for the three basic

levels of proof. It asserts that in situations where there is potential criminal conduct or acts involving moral turpitude, most arbitrators select the burden of proof standard as beyond a reasonable doubt. In this case, the County's allegations contain potential criminal activity and therefore, require the heaviest burden of proof.

The Association next contends that the County violated the Just Cause standard by not providing proper notice of the charges to the Grievant. The Grievant is entitled to know precisely what the charges are that are being levied against him.

The Association contends that the Just Cause principle contains the necessity that the investigation conducted by the Employee should be all of the attainable relevant evidence. The evidence produced should be free of any bias.

In this regard, the Association contends that Sergeant Worden had a long standing bias against Grievant. This bias resulted in an incomplete investigation. The Association also contends that Undersheriff Somday had an improper perceived bias against Grievant.

The Association contends that just cause was violated because the termination of Grievant was based on unproven allegations and therefore the County failed to carry its burden of proofing that Grievant made a material false statement.

The Association asserts that the actions of the Grievant have not brought any discredit to the Sheriff's office. However, Undersheriff Somday stated that in his opinion, the actions of Grievant brought discredit to the Sheriff's Department. The Association argues that the words "reproach" and "discredit" are too vague to justify disciplining Grievant for his actions.

The Association contends that the County failed to establish Grievant tried to use his position as a deputy sheriff to secure preferential treatment. The Association argues that the evidence presented to prove the preferential treatment allegation was a fictional product of Sergeant Worden's mind.

The next contention of the Association is that the DUI by itself does not warrant Grievant's termination. The Association produces several cases supporting this

contention. A very important fact is Grievant's almost instant rehabilitation actions. These alone should justify his return to his job. The Association argues reinstatement is permissible even though there is a DUI in the process. The Association suggests the Arbitrator observe the great disparity of discipline dispensed to Grievant compared with the treatment imposed in the case of Nancy Lewis. She was actually intoxicated while on duty. When questioned she lied repeatedly about it. The employee was suspended without pay until she successfully completed a treatment program on her own money. The Association rejects, as not relevant, cases cited by the County where the employees were given the opportunity to resign.

The Association contends that Grievant was not provided progressive discipline as required by the Just Cause concept. The key point here is a person is not required to jump from written reprimand to termination.

Further, the County violated the Just Cause requirement by not accommodating Grievant for alcoholism or recognizing it as a mitigating factor in the Grievant's ongoing conduct. The Association contends that Arbitrators find admissible and give to alcohol treatment evidence significant weight as a mitigating factor. The Association argues that Grievant's adherence to the alcohol treatment program which he entered shortly after his arrest should be considered as mitigating factor in assessing whether or not discharge is the appropriate remedy in this matter.

In conclusion, the Association requests a remedy making Grievant whole in all respects and returning him to his prior position as a canine officer in the Okanogan Sheriff's Department.

VIII. EMPLOYER'S POSITION

The County begins its brief by addressing the pre-termination investigation which started on August 21, 2006. Sergeant Worden met with the Greivant. Sergeant Worden, who was the supervisor appointed by the County to conduct the investigation in Grievant's case,

conducted a recorded interview of Grievant. A brief overview of the incident was provided by Grievant. The whole process is outlined in Exhibits 2, 3, 4 and 15. There was no issue raised regarding appropriate due process and the County opined that the appropriate due process was provided the Grievant.

The County then produces the one reprimand which was part of Grievant's personnel file. The letter was dated January 30, 2006. It is included as Exhibit E-7.

The County next examines the incidents, that while not resulted in any type of discipline, were subjects of counseling of Grievant's aggressive conduct by fellow officers. These were set forth in the brief as the "honor guard porn shop incident". This involved a call from a police agency on the coast regarding the parking of Grievant's police vehicle in front of a porn shop while he was on honor guard duty. The incident was revealed because a agency thought that Grievant's police car had been stolen. The County assigned an officer to talk to Grievant about the incident. There was no discipline. It was, however, as stated, embarrassing to get such a call from a department in another jurisdiction.

The next example cited involved an incident at SeaFirst Bank. Under Sheriff Somday received a complaint that Grievant was in uniform and acting belligerently, yelling at clerks and actually let himself behind the bank counter, where he verbally assaulted the manager. Under Sheriff Somday spoke with the manager and determined that Grievant was trying to cash a check and was in uniform and basically lost control when he was asked for identification. Under Sheriff Somday spoke to Grievant and told him to apologize to the bank manager. After two or three attempts, apparently, he managed to apologize to her on the phone for his actions.

The final example was an incident in the City of Omak. This involved Undersheriff Somday, who when he was working with the City of Omak, ordered Grievant to stay outside the city limits of Omak. The order was initiated by Grievant's action during a traffic stop, when Grievant pepper-sprayed a citizen inside his car. In the process, the driver's chihuahua dog, which was in the car, jumped out and was never found by the City. The City had to pay

for the dog.

Current Sheriff Rogers was employed at Omak during the dog incident and testified that the Chief Ron Bailey was the one who barred Grievant from the City of Omak. The County presented evidence that Grievant, in the course of his employment, took an oath of ethics as a condition of employment in the County's Sheriff's Department. The evidence also indicated that Grievant was aware of Policy 16-1-1, the standard for deputies of the County's Sheriff's Department. Exhibit E-8.

Deputy Emigh was terminated for violation of the Code of Ethics and Oath of Office and Code of Conduct. Deputy Sergeant Waters resigned as a result of a burglary investigation. The resignation letter was submitted June 15, 2006. The uncontradicted testimony of Sheriff Rogers was that he holds officers accountable and that they are to operate at a higher standard than other employees.

Over the County's objection, the Association produced evidence that Grievant was an alcoholic and participating in a deferred prosecution program on the DUI. Further, he has received counseling from Quality Resources LLC located in Wenatchee, Washington. Grievant is also, according to his testimony, required to blow into a machine before his vehicle is started. He also testified this deferred prosecution is for a period of two years and then a three year probation afterward. These penalties are effective for alcohol related offenses until September 2011. Grievant regarding his aggressive characteristics. None of those, however, were reduced to writing or actually appear in his personnel file.

IX. ANALYSIS AND FINDINGS

This matter involves a Deputy Sheriff employed by the Okanogan County Washington Sheriffs Department. In the course of my years as an arbitrator I, like many other arbitrators, have developed a particular philosophy as a background in which to view cases involving police officers. As a general proposition it is my view that police personnel should be held to a higher standard of performance than employees in other work environments. This higher

standard is the natural and reasonable adjunct to society's inalienable right to a peaceful and orderly existence. Police officers are intimately and constantly involved with public safety and with the protection of life and property of the citizens who live in the communities which they serve. However, I am also of the opinion that the process must be two dimensional. The right of the public's expectations come with a corresponding obligation on the part of the employer to be more insightful and sensitive to the needs of its police personnel in terms of the nature of the environment in which they must perform and the stress attendant to this environment. It should never be forgotten, but often is, that each day police officers report for duty they put on their flack jackets and put their lives on the line. It is against this background the analysis in this matter will take place.

In passing, I would observe that the brief produced by the Association is to be lauded by its length. It indicates a desire to be certain, through repetition, that its position is heard. However, in this case it strikes me as unnecessarily long. I am reminded of the famous quote, "I have made this letter longer than usual, only because I have not had time to make it shorter."

Burden of Proof. As is normal, the burden of proof in this matter presents, three possibilities regarding the quantum of the burden required. Almost without exception, I side with the majority of arbitrators who in the case of police and correction personnel apply the heavier burden of clear and convincing evidence. The justification lies in the severity of the collateral consequences they face if terminated. The potential for permanent interruption in their career path in police work is significant due the requirement they be certified. Revocation of certification is commonly know as the death penalty in this field. So it would be with Grievant.

If any of Grievant's actions rose to the level of a crime, then those actions could require proof beyond a reasonable doubt. The Association argued in addressing the burden of proof issue that the County was contending some of Grievant's actions rose to level of a

crime. It then argued the burden of proof required is beyond a reasonable doubt. Later on it argued none of Grievant's actions were severe enough to violate County's Code of Ethics and OCSO Policy 16-1-1 Code of Conduct subsections 1, 21, and 36. It is a dichotomy forced by the Association's desire to have the best of all worlds.

The Association's brief deals with the premise that there was a potential criminal activity on the part of the Grievant and therefore the greater burden of proof, beyond a reasonable doubt, is applicable. I find no evidence that the Grievant in this matter was engaged in criminal activity, since the Grievant sought and received the deferred prosecution process to deal with his DUI. While the reckless conduct of the Grievant with respect to his weapon was very serious it did not result in any criminal activity.

Accordingly, I find that the Employer will be required to prove by clear and convincing evidence Grievant's conduct justified his termination.

DUI Arrest. There is some confusion between the positions being asserted by the County in terms of whether the DUI has any relevance or should be ignored in dealing with this whole situation. Undersheriff Somday stated at one time during the hearing that it was not the DUI that was the core of the discipline. It was Grievant's conduct during his arrest, in particular his lying about his weapon, that was the major focus of the concerns. However, Sheriff Rogers testified when referring to the conduct that is expected from his officers that "...if you do a DUI, you are gone."

There is no question that Grievant, during his entire tenure in pre-arrest mode, lied several times to Trooper Wood and also to Sergeant Mead when he was called to the scene. In this respect, the Report of Investigation Narrative which Trooper Wood prepared shortly after Grievant was processed at the jail early in the morning of August 13, 2006, was uncontradicted. According to this report: the Grievant lied twice about the number of drinks he had consumed; asked Trooper Wood if he would let him sleep it off on the side of the road; three times started back to his car (Trooper Wood had to herd him back to the patrol car); told Trooper Wood twice during his pre-arrest screening that he had no weapon on his person

or in his car and after his arrest told Sergeant Mead that he had a weapon but would not disclose where. Trooper Mead then searched Grievant's car and found a black bag on the passenger front seat. The bag was unzipped and in it was Grievant's Glock 40 Caliber pistol. The holster flap was open and it was fully loaded with 15 hollow point bullets, one in the chamber and fourteen in the magazine.

During the hearing in this matter, Sergeant Mead testified, without contradiction, that he viewed Grievant's conduct as being on the whole uncooperative. In addition, Sergeant Mead stated during Grievant's processing there was absolutely no doubt in his mind that not only he wanted preferential treatment but by his demeanor exhibited was entitled to it. Trooper Wood testified that he had never arrested a law enforcement officer before and the process made him nervous.

Investigation. There was much time, effort and words applied by the Association to cast the investigation by Sergeant Worden as being biased. The Association cites several particular incidents that go back as far as 1995 involving then Patrol officer Worden and Grievant. In the interim, there is evidence that Grievant worked under Worden's supervision for extended periods of time and that at least once within the past three years indicated that he enjoyed working for Worden. In fact, Grievant testified that he told Sheriff Rogers only three weeks before Grievant's DUI that he enjoyed working with Sergeant Worden.² The items that are cited by the Association to support its claim of bias seem to be borne in desperation.

Actually, the evidence adduced at the hearing indicated that Grievant had problems with every sergeant in the department. Undersheriff Somday listed them all during his testimony. The Sheriff's Department selected Sergeant Worden to do the investigation since

² In conversation with Sheriff Rogers about Grievant testing for a Lake Chelan position, Grievant told the Sheriff he had no problems with Worden and also stated his reason for testing had nothing to do with the Department. It was more money and a more convenient commute.

he clearly appeared to be the best choice.

It is apparent to even the casual observer that Grievant was suffering from a supervisory paranoia which made it difficult for the County to process the investigation with an officer trained to do these types of investigations.

I have read the internal investigation letter that was presented to the Grievant on August 21, 2006. I also reviewed the investigation process whereby Sergeant Worden interviewed, at length, the two WSP Troopers that were involved in the DUI arrest. The investigation report was delivered to Grievant. Grievant was also supplied with the precise steps that Sergeant Worden utilized in his investigation leading up to his conclusion that Grievant should be terminated.

After examining the information and other data relating to the investigation of Grievant's actions, including the various unsupported contentions by the Association that there was bias, I have concluded that there has been no bias on the part of Sergeant Worden. To the contrary, I found him to be a conscientious and thorough police officer who brings a high degree of professionalism to his work. In addition, I find that the investigation materials are complete and objective.

There is no doubt that Grievant's actions flunked the relevant provisions found in the language in the Code of Ethics, the language in OCSO Policy 16-1-1, Subsections 1, 6, 21 and 36 RCW 9A.76.175 Making a false or misleading statement to a public servant, seeking privileged treatment because of his position as a deputy sheriff, lying about his drink consumption, being uncooperative during much of the pre-arrest and arrest process and finally lying regarding whether he had a weapon and refusing to tell where it was after admitting that he, in fact, did have weapon.

In my view, other than the DUI itself, his conduct with respect to the gun could be sufficient in itself to justify termination. If the gun had been zipped up in the bag and in the back seat the situation would be totally different since many officers carry their weapon in their car when they are off duty. However, in this case Grievant lied point blank two times

that he had no gun on his person or in his car. He was clearly arrogant and insubordinate when Sergeant Mead asked for the third time if he had a weapon and Grievant did not even respond to the question. Sergeant Mead then found the weapon. It was a fully loaded Glock 40 Caliber pistol with 15 hollow point bullets. The pistol was in the passenger front seat of the car in an unzipped black bag. The holster flap was open. There was one bullet in the chamber and 14 bullets in the magazine. When in this position the pistol would have been in a quick access mode and in the possession of a police officer that had just been arrested for a DUI. One must not forget that Grievant made three blunted attempts to return to his car while Trooper Wood was interviewing him. The inevitable questions are: Why was the gun in the front passenger seat? Why was it within almost instant reach? Why was the flap of the holster open? Why was the gun fully loaded with a bullet in the chamber? Why the three attempts to get to his car? Was the reason for his safety, for attack or for a purpose not connected with either? We will probably not find the answers to these questions. I do believe, however, all the ingredients for a potential disaster were there. Fortunately it did not ignite. I can understand why Trooper Wood was nervous. He had every right to be.³

Again, I find the investigation process involving Grievant was beyond reproach and not only that, was one of the better investigations which I have reviewed.

One of the issues raised in this matter is whether or not Grievant's conduct brought reproach or discredit to the Sheriff's department. In my view, there is no way Grievant's conduct could not result in a black eye for the department. The population of Okanogan County is centered in the cities of Okanogan and Omak. These are very small communities and news, particular bad news, travels fast. For example the news of Grievant's arrest was emailed from Bremerton in Kitsap County within an hour or so after it happened thereby sending it across the state. The Association punches around at the words 'reproach' and

³ As noted before, Trooper Wood testified that he had concerns about Grievant trying to get to his care during the pre-arrest interview. He stated a WSP allowed a suspect to return to his car during a stop and the suspect returned with a gun and fatally shot the officer.

'discredit' trying to find some way to justify Grievant's conduct in this matter. It failed. After all, by his own admission he gave out more traffic tickets than any other deputy in the department. He also testified that he was a macho cop. He had a high profile in the community. Again, the Grievant is the best evidence that his actions brought discredit to the Sheriff's Department. He testified that he drove 50 miles to Wenatchee for his alcohol treatment so he would not embarrass the Sheriff's Department in Okanogan. The Association claims that the fact Grievant testified in a court proceeding as support for its position that Grievant actions did not bring discredit to the Sheriff's Department. This evidence is not at all probative. The fact is there was no one else available since it was his case. I will take arbitrable notice that Grievant's actions brought discredit on the County.

Impairment. Grievant was stopped by Trooper Wood on August 13, 2006, for speeding and crossing the center line. (62 mph in a posted 40 mph zone and 62mph in a posted 40mph zone).⁴ The approximate time was 2:20 am. When Grievant was pulled over, Trooper Wood noticed a distinct and strong odor of alcohol coming from inside the vehicle. Trooper Wood then performed the standard Personal Contact, then the Pre-Arrest Screening and Arrest Process. As indicated above, Grievant lied several times and was uncooperative and generally obnoxious as he described himself at the hearing. Grievant was unable to walk without assistance and failed the Standard Field Sobriety Test. The conclusion reached by Trooper Wood, a seasoned officer who has processed more than 100 DUI's in his career, was that Grievant was "obviously impaired".

This has a significant effect on the conversations between Grievant and Trooper Wood. The word 'impaired' means that the quantity of alcohol in his system distorts his mental and physical faculties. Grievant had difficulty understanding the questions posed to him. He was disoriented and unable to walk without staggering. It is much the same as a boxer that has taken several hard blows to the head. They switch back and forth between being conscious

⁴ Trooper Wood could have given Grievant a ticket for speeding. Apparently, his attention was focused on the more critical problem of Grievant's condition.

and on the verge of blacking out. Grievant in this state would not be consistently able to know the difference between the truth and a lie. The specific intent to lie would be sporadic but the impaired person would not know the difference. Shouting the same thing over and over as Grievant did with, "I am f_____ed", would be expected of an impaired person. During the same period there could be periods of lucidity.

Based the above analysis, it is clear that Grievant was not lucid but in an impaired state and therefore could not be accountable for his conduct which violated portions of the Code of Ethics and portions of OCSO policy as well as 36 RCW 9A.76.175-Making a false or misleading statement to a public servant.

Just Cause. The Just Cause postulates set forth in Enterprise Wire encompass seven litmus tests to be applied to determine if there is just cause for the termination of an employee. These tests were used some forty years and are somewhat channeled by time. An increasing number of arbitrators, including myself have found them to be too restrictive for both sides given the enormous changes in the work environment over the past four decades. One excellent example is the intrusion of email and its ability to penetrate every computer in the work place.

In the instant matter, the Grievant knew the consequences of his actions. by his own admission. He knew the rules and knew what would happen to him if he got drunk and was arrested for a DUI.⁵ Those rules were clearly related to the orderly and safe operations of the County and the performance the County could expect of Grievant. There is no question the County did discover that Grievant had violated several rules and policies as indicated above. However, those actions were neutralized due to Grievant's self-induced alcohol impairment. As determined previously the investigation conducted was fair and objective.

⁵ I did not find in any of the County's rules and regulations any specific provision indicating a zero tolerance with respect to DUI's other than Sheriff Rogers' statement made during his testimony: "If you get arrested for DUI you will lose your job." The statement was in the context of theorem that law enforcement officers are held to a higher standard than workers in other job environments.

The requirement that the County not be disparate in imposing different discipline for similar violations was not followed in the Grievant's case. The case of Nancy Lewis is a prime example of disparate treatment. The facts were that Nancy Lewis, a Control Room Operator, was discussing a grant with Sergeant Stewart and Celeste Pugsly. At 10:20 a.m. Sergeant Stewart requested that Sergeant Roberts ask Officer Lewis to report to his office because while he was discussing the grant he thought he smelled alcohol on her breath. After Officer Lewis left the room, Sergeant Stewart asked Celeste Pugsley if she smelled alcohol on Lewis' breath and she replied that she did. Officer Lewis was then asked by Sergeant Roberts to report to Sergeant Stewart's office. Once they were all there Officer Lewis was advised that they smelled alcohol and she was asked if she had been drinking and she stated she had not. Again, she was told she had the smell of alcohol on her breath she stated that she had consumed a half a glass of Champagne at 7:00 a.m. that morning.

Later during the interview she agreed to submit to a PBT sample. The test result was .117. Officer Lewis was asked again if she had anything more than Champagne and she again said no. They suggested that she take out her dentures since there may be residual alcohol there and that would be the reason for the higher reading. After doing so her reading was .112. It was at this time that Officer Lewis told Chief Stewart that she also had a glass of vodka that morning. Sergeant Roberts and Office Lewis then returned to Sergeant's Stewart's office where she advised Officer Lewis that she would be placed on Administrative Leave pending a pre-discipline hearing.

An internal investigation by Sergeant Roberts concluded that Officer Lewis was intoxicated at work in violation of PRO-16-1 Code of Conduct. The discipline imposed was that Officer Lewis was suspended without pay until successful completion of treatment at her own expense. She then was to produce certification by a certified treatment facility indicating completion of treatment. Officer Lewis was given the option if she was successful in her treatment program of using accrued sick leave and vacation balances. Also, if still successful in the treatment program and near its end the County might consider placing her on suspension with pay.

The comparisons between the discipline given Officer Lewis and that given this Grievant are striking. In fact they are so disparate as to be shocking and self-evident. However, if in case the obvious should be obfuscated by rhetoric as it apparently has for some examining this issue, I will point them out. Officer Lewis arrives for work at 10:30 a.m. on February 23, 2004. Two of her co-workers note she has a clearly discernable odor of intoxicants about her. When asked by one of them about the odor, she replied she had a partial glass of stale champagne that morning. Apparently, the odor was sufficiently strong enough that they asked her if she would take a PBT. After she blew a .117, she admitted she had a glass of vodka that morning. Because she is intoxicated they will not let her drive her car so she finds someone to take her home. While it was not specifically determined that she drove her car to work there is no evidence that she did not. I am certain that someone in the process asked her if she drove to work otherwise why would those who were processing her determine that her car was at work and prevented her from driving.

On the other side of the coin, Grievant while on vacation and obviously off-duty, gets blasted and ends up being arrested for a DUI. He testifies, without contradiction, that during the process, he had an epiphany and realized that he is an alcoholic. A day or two after the arrest he joins Alcoholic Anonymous.⁶ He also enters the deferred prosecution program within days of his arrest.

The County initially urged that the corrections personnel and the deputies were separate departments and not subject to the same policies. However, after a few more questions, Sheriff Rogers admitted that the policies for the deputies and the correction officers are the same. Ergo, Grievant and Officer Lewis should be subject to the same policies and like discipline for infractions of them. In fact, the actions of Officer Lewis are more egregious

⁶ According to the testimony of Morris Reagan of Quality Resources, LLC, the chemical dependency professional who has been working with Grievant since September 9, 2006, because alcoholics are in denial of their problem it is not unusual for them to have to encounter an earth-shaking experience to recognize their problem.

since she went to work intoxicated and aware that she had been drinking before reporting to work. Her punishment was suspension without pay and a directive that she seek treatment at her own expense and continue until she could produce a certification from a certified treatment program. Also, they indicated some leniency with respect to her pay toward the end of the treatment. The Grievant's actions, while severe, occurred when he was on vacation in the far western part of the state. Within days he was on damage control by recognizing and admitting he was an alcoholic, by immediately joining AA as a support group and seeking and receiving Deferred Prosecution. All of these actions were done before Grievant was terminated. I find that Grievant was subject to disparate treatment with respect to the punishment imposed by the County compared with that given a fellow employee whose actions were more severe for the work place than Grievant's.

Deferred Prosecution. The process of Deferred Prosecution is a built-in forgiveness that is available to first time DUI offenders. It converts a DUI into a forgivable offense by granting a process which, if followed over a five year period, will expunge the offense from the offender's record.⁷ The term means just what it says. There are no charges filed. The case is simply put on hold. If there are any violations of the terms of the deferment then the charges are pulled from shelf and the prosecutor proceeds to prosecute. Grievant has been in this process since shortly after his arrest and prior to his termination. In addition, he is taking treatment from Quality Resources an alcohol treatment facility in Wenatchee. His personal counselor is Morris Regan. He testified that Grievant came to him on September 6, 2006, and told Mr. Regan that he had a drinking problem and had a horrible experience. He stated that he was willing to do anything necessary to take care of it. When he went to Mr. Regan Grievant had been sober since the DUI arrest, a period of thirty days. Mr Regan testified that

⁷ In the initial two years Grievant will be required to do intensive treatment for six months, then sixteen months of weekly counseling sessions. He will attend a minimum of two support groups per week which are verified in writing. After that there is a three-year probation period. At any time during this period if he has a drug or alcohol incident the deferment is revoked and charges are filed in court.

Grievant has done a great job. It has been almost a year and he has gone to more groups than required by his deferred prosecution and has become a group leader. Grievant's tenure with Mr. Regan's program will last until September 2008. Mr. Regan who has seen a thousand or more patients in his career testified that Grievant has done all that has been asked of him and more. He stated that the prognosis is good and that if he continues to reach out to people and go to support groups there is an excellent chance that he will never drink again.

The County has an issue relating to Grievant's dishonesty in this matter. His arguments and citations support his position. I would agree with its position if Grievant's honesty were an issue here. It is not. Unfortunately, the County's arguments and case authority are not relevant because Grievant, at this time, has not been convicted of a crime or in fact even charged with a crime. The County certainly knows that Grievant is innocent until proven guilty. His protection currently lies in the deferred prosecution process sanctioned by RCW 10.05.

The deferred prosecution process inherently provides that post-termination evidence be considered since it is a monitoring process that continues for five years. It is, in essence, a five-year last chance program.

X. CONCLUSION

I find by clear and convincing evidence that the County violated the just cause requirement against disparate treatment in the case of the discipline imposed on Officer Lewis, which was suspension, verses that of Grievant which was termination. I further find the penalty of termination for Grievant's proven misconduct too severe. A lesser discipline is appropriate. The record shows Grievant is a good pro-active police officer and up to this point had only one written reprimand in his six year tenure with the County. The record indicates that he was an excellent K9 Officer who was a master trainer and trained other K9 dogs through out the state of Washington. In short, he is a valuable employee and as such is a valuable asset to the County. However, I believe that Grievant's discipline needs to be severe enough to catch his attention so that he realizes any additional misconduct within the

next two years could be reason for immediate termination.

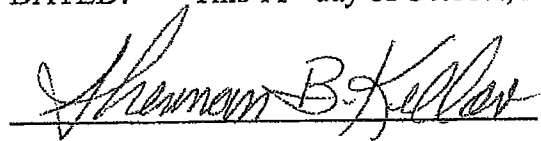
Accordingly, it is my finding Grievant is to be reinstated to the police officer position he held at the time of his termination. Grievant shall forfeit four months pay including attendant benefits and shall be entitled to all back pay with full benefits, after said deduction, until his reinstatement.

XI. AWARD

After careful consideration of all oral arguments, evidence submitted, briefs filed and for the reasons set forth in the foregoing opinion, it is awarded:

1. The Grievance is allowed subject to the following conditions;
 - A. The Grievant is to be reinstated to the Police Officer position that he held at the time of his termination.
 - B. Grievant shall forfeit four months' pay including all attendant benefits and be entitled to all back pay with full benefits after said deduction until his reinstatement.
2. Pursuant to Article 20.3 of the Contract, the Arbitrator's fees and charges shall be borne equally by the County and the Association.
3. The Arbitrator, pursuant to the stipulation of the parties, will retain jurisdiction for a period of forty-five days from the date of the award to assist the parties, if needed, in its implementation.

DATED: This 11th day of October, 2007



Sherman B. Kellar, Esq.
Arbitrator