

VOLUNTARY LABOR ARBITRATION TRIBUNAL

In the Matter of the Arbitration between

**Shiawassee County,
and the Sheriff of Shiawassee County,**
Employer
-and-

**Gr. Nos: 19-97/19-107
K. McGuckin – Suspension & Termination**

Police Officers Labor Council,
Union

**Hearing Dates: 7/16/2021 (In-Person)
1/18/2022 & 2/09/2022 (Zoom)**

APPEARANCES¹

For the Employer:

Bonnie G. Toskey, Esquire
Brian BeGole, Sheriff
Brian Boggs, County Administrator (Observer)
Mark Pendergraff, Investigator
Robert Brancheau, Former Undersheriff
Cory Carson, Undersheriff
Casey Colbry, Staff Sergeant
Sam Safi, Fleet Supervisor
James Stafford, Corrections Deputy

For the Union:

Michael Akins, Esq.
Christopher Watts, POLC Business Agent
Kathleen McGuckin, Grievant

INTRODUCTION

The Grievant, Kathleen McGuckin, was employed as a Corrections Sergeant in the Sheriff’s Office of Shiawassee County, Michigan (“County” or “Employer”). She is a member of the Police Officers Labor Council (“POLC” or “Union”). The Union and the Employer are parties to a collective bargaining agreement (“CBA”).²

¹ Individuals listed as appearing may have appeared during any or all of the arbitration hearing dates. Counsel for each party, as well as the Grievant (and, of course, the Arbitrator) were present for the entire hearing.

² Joint Exhibit 1 (January 1, 2019 – December 31, 2022). It should be noted that the following exhibits were taken into the record for this case: Joint Exhibits 1-8, 46; Employer Exhibits 9-45, 48-53; Union Exhibit 1.

On September 18, 2019, the County suspended the Grievant's employment pending investigation.³ On September 20, 2019, The Union filed grievance No. 19-97 on behalf of the Grievant to protest the suspension.⁴ At the conclusion of its investigation, the County terminated the Grievant's employment effective October 21, 2019. On October 24, 2019, the POLC filed Grievance 19-107 to protest the termination.⁵ On October 29, 2019, pursuant to the Union's request, the Sheriff agreed to allow both grievances to proceed to arbitration.⁶ The parties selected the undersigned arbitrator to hear the cases.⁷ There was no allegation that the grievances were not properly before the Arbitrator.

A hearing in these consolidated matters was scheduled and held in person on July 16, 2021. The Employer was represented by Bonnie Toskey, Esq. of Cohl, Stoker & Toskey, P.C. The Union was represented by POLC Attorney Michael Akins. The hearing was not concluded on July 16, and subsequent hearing dates were set.⁸ The hearing eventually continued via Zoom on January 18, 2022 and February 9, 2022. A record of the hearing was taken by Joan Byrnes, CSR and Annette Leeck, CSR.⁹

Both parties had the full opportunity to present testimonial and documentary evidence, examine and cross-examine witnesses, and present oral and written argument. The parties opted to file post-hearing briefs with the Arbitrator. These were received electronically on April 15, 2022. The parties agreed to allow the Arbitrator to have until June 30 to issue her decision and findings in the matter.

ISSUE

Did the Employer prove that it possessed just cause to terminate the Grievant's employment effective October 21, 2019? If not, what is the appropriate remedy?

³ Employer Exhibit 40

⁴ Joint Exhibit 46.

⁵ Joint Exhibit 46.

⁶ Joint Exhibit 46.

⁷ On April 6, 2020, the Arbitrator first learned of her selection to hear these cases. The hearing was first scheduled for August 14, 2020, then January 21, 2021. Neither of these dates came to fruition due to Covid concerns. A subsequent hearing date of April 16, 2021 was postponed due to a conflict of the Employer's attorney.

⁸ The hearing was originally scheduled to be continued on November 3 and 4, 2021, but was again postponed. The Covid pandemic was continuing during the course of the hearing dates and was especially virulent and pervasive in Michigan during various hearing dates that were scheduled. Several of the individuals who were due to attend/participate in the continuation of the hearing even experienced the virus. The Arbitrator wanted to continue the hearing virtually (on Zoom), but the Employer was reluctant to continue in this manner. A scheduled Zoom hearing date of January 6, 2022 was postponed by the County.

⁹ Ms. Byrnes was the court reporter on July 16, 2021 and January 18, 2022, and Ms. Leeck was the court reporter on February 9, 2022.

RELEVANT CBA PROVISIONS
& RELEVANT SHIAWASSEE COUNTY SHERIFF'S
OFFICE POLICIES/GENERAL ORDERS

ARTICLE 2 – MANAGEMENT RIGHTS

Section 1

General

Except as otherwise provided in this Agreement, the Employer retains all rights, function, powers and authority pursuant to the laws and the constitutions of both the State of Michigan and the United States of America which the Employer has not specifically abridged, delegated, or modified by specific terms of this Agreement. Without limiting the generality of the above statement these rights include but are not limited to:

...

Discipline and Discharge

The Sheriff reserves the right to discipline and discharge in conformance with the terms of this contract.

...

Section 3 Rules and Regulations

A. The Sheriff shall have, within his discretion, the right to make reasonable rules and regulations and to amend, supplement or delete such rules and regulations. However, the Union's Business Representative and the Union Stewards shall receive a copy of any new or modified rule or regulation thirty (30) days prior to its implementation unless conditions warrant immediate implementation. If the Union disagrees with the new or modified rule or regulation, it may request to meet and confer with the Sheriff on the proposed rule(s). If the Union believe the new or modified rule or regulation creates a conflict with the terms of the Collective Bargaining Agreement, a grievance may be filed.

.....

ARTICLE 10
GRIEVANCE PROCEDURE

...

Section 2 Grievance Procedure

...

Grievance Procedure for the Internal Operations of the Department.

- A. If the grievance is not satisfactorily resolved at Step 2, it may be appealed by submitting the grievance to the Sheriff or his designee within five (5) days following receipt of the written answer in Step 2.
- B. Within ten (10) days after the grievance has been appealed, a meeting shall be held between the Sheriff and/or his designee and the Union Steward and Grievant. Either party may have non-employee representatives present, if desired. In the event the meeting cannot be held within the ten (10) day period, the parties mutually agree that it shall be scheduled for a date mutually convenient for the parties without unreasonable delay.
- C. The Sheriff shall place his written answer on the grievance within seven (7) days following the meeting. In order for the decision to be binding at Step 3, the answer must bear the signature of the Sheriff or his designee.
- D. Appeal from this step shall be to Section 3, Arbitration.
- E. It is understood by all parties that neither the Sheriff or any command officer has the authority to bind the Board of Commissioners regarding economic issues. The economic consequences of a discipline such as suspension without pay or discharge shall not render a grievance subject to final control by the Board of Commissioners.
- F. The Sheriff retains the authority to finally decide all grievances and disciplinary actions.

Section 3 Arbitration

- A. If the grievance is not settled in the last step above, the Union representative may submit such grievance to arbitration.
- B. This submission is to be made within thirty (30) days after receipt of the Step Three answer.
- C. Each grievance submitted to arbitration shall be submitted to the Federal Mediation and Conciliation Service in accordance with its Voluntary Rules and Regulations within the time specified above and such rules shall govern the arbitration hearing.
- D. The Arbitrator shall have no power or authority to alter, amend, add to or subtract from the terms of this Agreement, nor to make any recommendation with respect thereto.
- E. Both parties agree to be bound by the award of the Arbitrator and that the cost of any arbitration proceeding under this provision shall be borne equally between the parties, but the fees and wages of Union Representatives, counsel, witnesses, or other persons attending the hearing shall be borne by the party incurring them.

.....

ARTICLE 12
DISCIPLINE AND DISCHARGE

Section 1 Just Cause Standard of Discipline

The Employer shall not discipline or discharge an employee who has successfully completed probation except for just cause.

- A. Statements – No employee shall be required to make any statements concerning the alleged offense without the presence of a Union Steward or Union Representative and/or union attorney when the employee expresses a desire for such representation.
- B. Predetermination Hearing – Before any final disciplinary action is taken against an employee, the commanding officer who is rendering such discipline shall give the employee an opportunity to state his position and offer any evidence immediately available.

1. Representation – The employee against whom charges have been made may be represented at such hearing by the Steward or anyone of his/her own choosing.

Section 2 Notice of Discipline

Notice shall be given to the Union by the Employer on any discipline within twenty-four (24) hours of invocation of such discipline, except as specifically excepted herein.

A. Charges and Specifications

The charges and specification resulting in a discipline shall be reduced to writing by the command officer invoking the action and copies furnished, if the employee wishes, to the Union and the employee against whom the charges are brought.

B. Specific Sections

Such charges and specification shall cite the specific basis for the action including the sections of Rules and Regulations and/or appropriate law or ordinance which the employee is alleged to have violated.

Section 3 Past Infractions

In imposing any discipline, the Employer will not base his decision upon any prior infractions of departmental rules or regulations which occurred more than two (2) years prior to the current offense unless directly related to the current charge.

Section 4 Oral Reprimand

The procedure as outlined above shall be applicable in all disciplinary proceedings except for verbal reprimands which are exempt from the provisions of this Agreement.

Section 5 Relieved of Duty Pending Investigation

In the event a member is relieved of duty pending an investigation, he/she shall continue on the payroll until:

1. returned to duty, or
2. suspended from duty pending investigation, or
3. disciplined.

Section 6 Suspended from Duty Pending Investigation

1. In the event an employee is exonerated of the charges causing a suspension pending investigation, he/she shall be compensated for all back wages lost due to the suspension.
2. Such wages shall be based on regular pay hours and shall not include overtime which may have been lost.

RELEVANT SHIAWASSEE COUNTY SHERIFF'S OFFICE POLICIES/GENERAL ORDERS

Shiawassee County Sheriff's Office General Order, No. 101, Part 1, General Rules of Conduct, Part J, False Statements

1. Members shall not knowingly make any false statements or misrepresentations of the facts on any official matter.
2. Any false statement may lead to discipline.

Shiawassee County Sheriff's Office General Order, No. 101, Part 2, General Rules of Conduct, Part F, Conduct Unbecoming

1. Members shall conduct themselves at all times, both on and off-duty, in such a manner as not to discredit the Sheriff's Office.
2. Conduct unbecoming a Member shall include that which brings the Office into disrepute or reflects upon the Member, or that which impairs the operational efficiency of the Sheriff's Office.

Shiawassee County Sheriff's Office General Order, No. 101, Part 2, General Rules of Conduct, Part N, Confidential Information

1. Member of the Sheriff's Office will not communication to any non-Member of this Office, any information concerning operations, activities, or matters of Sheriff's Office business; the release of which is prohibited by law or which may have an adverse impact on the Sheriff's Office operations.
2. Members will communicate promptly to a Supervisor information regarding tips on crimes, criminal activity, or other relevant law enforcement information which may come into their possession.

Shiawassee County Sheriff's Office General Order, No. 101, Part 2, General Rules of Conduct, Part O, Public Appearances

1. Members receiving a request to make a public presentation or appearance, or publish an article concerning their duties, shall obtain permission from the Sheriff or his designee.
2. The Sheriff's Office wishes no interference with the First Amendment rights of Members; however, the Office reserves the right to authorize appearances or writing that represent it.

BACKGROUND

The Grievant began her employment with the County on March 1, 2013 as a Corrections Deputy. In 2017, she was promoted to the position of Corrections Sergeant. She worked on the night shift at the Jail.

On July 18, 2019, the Grievant was apparently on vacation from her job. That afternoon she drove her vehicle to Owosso to go the ATM of her bank in order to withdraw money to give to her

brother Tim McGuckin.¹⁰ The bank is off of M-21 and is situated off the parking lot of a Kroger grocery store. The ATM receipt indicates that the money was withdrawn at 3:35 p.m.¹¹ According to the Grievant and her cell phone records, she was talking to her friend and colleague, Corrections Sergeant Hunt from 3:21 to 4:24 that afternoon,¹² while she ran her errands. The Grievant even stated that she did not get off the call when she handed the money to her brother in the parking lot shortly after withdrawing it.

During this time, an automobile accident occurred nearby on M-21 in front of the Kroger. At the time of the accident, Shiawassee County Special Deputy Sam Safi was driving a County Patrol Vehicle¹³ eastbound on M-21 enroute back to the Department after having had its air conditioning repaired. Mr. Safi held the paid position of Fleet Supervisor for the Department.¹⁴ When Mr. Safi observed the crash, he stopped his vehicle, activated its emergency lights, and went to check on a woman in one of the vehicles involved in the accident, since it appeared that her airbag had deployed, and she was holding her wrist. He called Central Dispatch on his cell phone and requested a police patrol officer, an ambulance, a fire truck and a tow truck. At one point, a woman who had witnessed the accident spoke with Mr. Safi near the crash in the street, and he instructed her to wait for the patrol officer.

While helping out at the accident scene, Mr. Safi noticed Sgt. McGuckin in her car nearby in the exit lane leading from the service drive to M-21. She had apparently stopped her car and Mr. Safi waved to her. According to Mr. Safi, Ms. McGuckin was holding her cell phone up off the steering wheel and was holding each end of the phone which was apparently aimed toward Mr. Safi, taking photos and appearing to also be texting. Safi continued to temporarily direct traffic around the crash scene in order to minimize the risk of other vehicle accidents until other help arrived.

Certain members of the Department resented Mr. Safi and constantly questioned whether he had the authority to engage in certain duties. A Facebook page known as the “Repeater” or as the “Shiawassee County Neighborhood Watch” page often ridiculed Mr. Safi. After leaving the scene of the crash after all the emergency personnel had arrived, Mr. Safi drove back to the Department and stopped in to talk to Lt. Carson.¹⁵ Mr. Safi told Lt. Carson that he had seen Sgt. McGuckin taking photos of him at the accident scene. That day, Mr. Safi also called and then met with Sheriff BeGole and told him about Sgt. McGuckin’s actions. According to Mr. Safi, he reported this to his superior officers because he was afraid that the photos would be posted and that he and his family would be subject to further ridicule.¹⁶ The Sheriff said that he told Safi to calm down, that

¹⁰ Tim is employed as a Corrections Officer in Lapeer County. Since he has the same last name as the Grievant, his full name or his first name will be used when referring to him in this decision. When “McGuckin” is used by itself, it refers to the Grievant.

¹¹ Employer Exhibit 41.

¹² Employer Exhibit 41.

¹³ This vehicle was known as the old K-9 vehicle since it apparently had the name of the former Sheriff’s Department K-9 on the vehicle.

¹⁴ Shiawassee County Sheriff Brian BeGole personally hired Mr. Safi, after Mr. Safi had done volunteer work for the Department. Sheriff BeGole had known Mr. Safi for about 20 years and had great confidence in Mr. Safi’s work ethic and mechanical competence.

¹⁵ Carson had reported to the scene of the accident; Sgt. Brandon Worrell was also there.

¹⁶ According to Mr. Safi’s testimony he said he told them that Kathy McGuckin was taking pictures and that “something not good is going to happen.”

there was nothing wrong with her taking pictures and that they would see what happens.¹⁷ Safi also drafted a written statement regarding the events of July 18.¹⁸

On the weekend of July 19, 2019, Corrections Deputy Jim Stafford approached Sgt. Keith Hansen¹⁹ and told Sgt. Hansen that, in a phone call, the Grievant told him (Stafford) that she had taken a photo or photos of Safi on the 18th; she believed that Safi was exercising excessive authority at the accident scene. Stafford allegedly told Hansen that the Grievant told him she was upset that Safi was “responding to calls as if he were a police officer.” Hansen told Stafford not to give advice to McGuckin and also told him not to speak of this to others.

On July 26, 2019, several photos taken at the accident scene on July 18, were posted on the Repeater page of Facebook.²⁰ First there was some text posted at 3:49 p.m. with photos of Safi and the woman who was the witness to the accident. That posting had a photo credited to “Derek Williams.”²¹ The posting stated:²²

Have you seen this Guy? His name is Sam Safi and he pretends that he is an actual police officer. His background includes being employed at Woodward’s and Walmart. He did not attend college or attend the police academy.

He was hired by the county sheriff department January 3rd 2019 as a part time employee (he works 40 hours a week though) that would be the head of the Towing Rotation/1033 Military fund/Fleet. He was deputized as a special sheriff, just like many of the non LEO’s within the department. None of the other non-certified special deputies are given department issued weapons (we have been told by actual certified officers within the department that he failed his firearms class multiple times). They also aren’t driving around emergency vehicles with lights and sirens activated and arriving at the scene of accidents. They also do not wear full SCSD police uniforms. This is public trickery. He wears the same uniforms the real police wear. How confusing!

Sam Safi destroyed a crime scene last May 2018 by picking up a weapon without gloves, at the scene of a fatal accident. He was just a “volunteer” at this time.

July 18th, Sam Safi arrived at the scene of an accident in front of Kroger gas station. He was driving the old K9 SUV that has the vehicle #33. He had lights and sirens activated. He has not gone through proper training to operate one of these, nor is he an officer.

¹⁷ Apparently, Safi had previously complained to the Sheriff about being ridiculed on the Facebook page. The Sheriff testified that the Facebook page also ridiculed him for hiring Safi.

¹⁸ Employer Exhibit 11.

¹⁹ Hansen is now a lieutenant.

²⁰ Employer Exhibit 12. In addition, there was at least one photo of Safi from a previous accident scene that was posted with the 7/18 photos. According to the Sheriff, the County population was 68,000 people, and 17,000 viewed the Facebook Repeater page. On the side of the posting, there was a photo with Mr. Safi’s head on the body of a movie character known as Deputy Dufus.

²¹ According to the record, there was apparently an earlier photo credit that named Kathleen McGuckin as the photographer, but the credit was quickly removed.

²² Employer Exhibit 12, page 4.

He also wasn't there to "secure" the scene. He was actively interviewing those involved. He has not been trained in proper police interviewing techniques either.

He was also on the scene [sic] of the accident on M-21/Delaney the week prior chumming it up with the employee of the towing company.

Now before you any of you begin to argue, think about volunteer firefighters and EMS. How they must go through extensive training prior to being allowed to be a volunteer. Only then are they allowed to operate on the roadways, with lights and sirens activated, when responding. They are also thoroughly trained on how to respond to fires/accidents. Sam Safi has none of that training.

Sam Safi operating outside the scope of his authority, interjecting himself into homicide investigations and destroying evidence, responding to crash scenes and also has access to the LEIN system.

I would highly recommend that you write your local county commissioner. This is an insurance liability, even if he does have a bond on record with the clerk's office, which is highly doubtful. Who paid for his bond? Did he or the county board (which is allowed by law) This could potentially open our county up to more litigation because no one is keeping a leash on Sheriff's "special deputy."

Also on July 26, 2019, more comments criticizing the integrity of the Sheriff's Office and Safi were posted.²³ This time, the post stated, "Sam Safi has run amok, unchecked, and it has been alleged her (sic) has more say and power than all employees at the sheriff's department."

A few days later, a follow-up post was made to the Facebook page that stated:²⁴

Since we posted about Sam Safi impersonating an officer story, we've read many comments from fake accounts and from people who are active in the drug scene, try and blame two specific employees of the sheriff's department for sending in pictures of Safi...

After the Facebook posting, the Grievant was purportedly told that her name appeared under the photo(s).²⁵ She said that Stafford had phoned her the day after the July 18 accident, but she stated that she never told Stafford that she took photos of the scene; she did tell Stafford that she saw "his buddy" (Safi).²⁶ On the evening of July 29, 2019, Grievant McGuckin wrote an email to Sheriff BeGole.²⁷ It stated:

Sheriff,

It has come to my attention that someone is accusing me of taking pictures of Sam Safi while working an accident scene.

²³ Employer Exhibit 12.

²⁴ Employer Exhibit 12.

²⁵ The Grievant testified that Sgt. Cross sent her a screenshot of her name on the posting.

²⁶ The Grievant testified that Stafford "is not a fan of Safi either" and that Stafford calls her a lot.

²⁷ Employer Exhibit 13.

I was in fact in the area however, I was in the Chemical Bank ATM drive thru and when I pulled around to leave I saw the accident scene and our K9 vehicle. I was on the phone with Sgt. Hunt at the time and when I pulled out into the roadway I saw Sam Safi near a lady in the middle of the road. He waved to me and I waved to him. I then drove West bound on 21.

At no time did I have time to take and post pictures. What Sam Safi does has no affect on my job or my ability to do my job. I have no interest in his responsibilities.

I do not follow that Neighborhood page as I have a million other things to do other than be on Facebook.

Receiving a call stating someone is accusing me (on this page) of taking photographs just because I was there is disturbing and a direct attack on my character.

I have since read the posts and I don't see my name as previously stated.

I am respectfully requesting for someone to ask Sam Safi or anyone making accusatory remarks to refrain from making unfounded and non-truthful accusations against me.

This behavior only creates hostility and resentment which our department does not need.

These posts and news articles are an embarrassment to our department.

I would hope that we could counteract them with positive information.

Respectfully
Sgt. McGuckin

On July 31, 2019, Sheriff BeGole wrote a reply to Sgt. McGuckin. It stated:²⁸

I have received your complaint against department member Sam Safi reference [sic] accusatory remarks being said about you. I too believe this type of behavior creates hostility and resentment within and outside our department. Your complaint will be investigated per department policy and when I receive the completed complaint from the investigator I will make a ruling on your complaint.

Thank you for bringing this to my attention.

On July 30, 2019, (in the interim between receiving Sgt. McGuckin's memo and replying to her) Sheriff BeGole had Undersheriff Brancheu interview Corrections Deputy Stafford about, inter alia, Stafford's allegations that the Grievant told him (Stafford) on July 19, that she had taken photo(s) of Safi on July 18.²⁹

After Sgt. Hansen saw the photos posted on Facebook, he drafted a memo on August 4, 2019 to then Undersheriff Brancheu and informed the Undersheriff that Stafford had previously informed him (Hansen) that McGuckin had allegedly admitted to Stafford that she had taken the photo(s).³⁰ Hansen wrote that he did not come forward earlier because he did not know if the photos of Safi actually existed or if they would be leaked to social media.

²⁸ Employer Exhibit 14.

²⁹ Employer Exhibit 16. Apparently, the same day that the photos appeared on Facebook (July 26), Hansen had called Undersheriff Brancheu and disclosed what Stafford had told Hansen about McGuckin purportedly telling Stafford about the photo(s) and allegedly seeking advice from Hansen.

³⁰ Employer Exhibit 17.

Also, on August 4, the Grievant wrote back to the Sheriff stating, “I believe there was a misunderstanding as I was not filing any formal complaint on any member of our department...I was only informing you of what I was told to get ahead of the game.”³¹ She went on to state, “I sent the email to inform you that these allegations are absolutely untrue and could potentially if kept up cause a hostile work environment...”

On about August 6, 2019, Mark Pendergraff was procured by the Sheriff, through the elected Prosecutor, to conduct an impartial investigation regarding the Grievant’s complaint.³² Undersheriff Brancheau contacted Mr. Pendergraff to have him commence the investigation.

Mr. Pendergraff conducted a comprehensive investigation into the matter. Below is a list of the individuals who he interviewed, their job titles at the time of the interview, the dates of the interview and the corresponding exhibit number, as well as additional notes based on the record:

<u>Date of Interview</u>	<u>Interviewee</u>	<u>Job Title</u> ³³	<u>Exhibit Number</u> ³⁴	<u>Additional Note(s)</u> ³⁵
8/07/19	Fred Atkins	Tow Truck Driver For All-Star Wrecking	18	Was present at accident scene; asked to draw diagram of scene
8/07/19	Richard Gokee	Owner of All-Star Towing	19	Friend of the McGuckin Family
8/07/19	James Stafford	Corrections Officer	20	Supervised by the Grievant at the time; was first interviewed by U/S Brancheau on 7/30 (Ex 16)
8/13/19	Casey Colbry	Sgt. in Corrections	21	Friends with the Grievant and her family
8/13 & 9/12/19	Sam Safi	Fleet Supervisor	22	Friends w/Sheriff; wrote statement (Ex 11) right after accident; drew diagram of scene
9/04 & 9/11/19	Timothy K. McGuckin	Corrections Officer for Lapeer County	23	Brother of Grievant; spoke on phone w/MP on 9/3 & 9/4; 9/11 interview was in-person in Lapeer County
9/03 & 9/12/19	Kathleen McGuckin	Corrections Sgt.	24	Grievant; Union Rep. Watts present for her interviews
9/04 & 9/12/19	Tia Lang	Corrections Officer	25	

³¹ Employer Exhibit 15.

³² Mr. Pendergraff worked in the Shiawassee County Prosecutor’s Office but as of the subject arbitration hearing dates, had retired. Apparently, Sheriff Begole initially tried to have the Michigan Sheriffs Association Mission Team conduct the independent investigation, but that entity declined to take the case as it did not appear to be a criminal matter. Instead, Sheriff Begole approached the Prosecutor for assistance in conducting an objective investigation into the matter and she offered up the services of Mr. Pendergraff.

³³ Unless otherwise noted, interviewees are employed by Shiawassee County.

³⁴ All are Employer Exhibit Numbers.

³⁵ Notes are derived from interviews and/or testimony (if applicable) and are not comprehensive. MP is Mark Pendergraff.

<u>Date of Interview</u>	<u>Interviewee</u>	<u>Job Title</u>	<u>Exhibit Number</u>	<u>Additional Note(s)</u>
9/04/19	Samuel Wells	Corrections Officer	26	
9/04/19	Cindy Livingston		27	
9/04/19	Stacie Jolley	Not employed by County	28	She contacted MP
9/04/19	Jacob Travers	Trooper with MSP	29	Often eats “lunch” w/night shift Corrections at Jail
9/04/19	Spencer Nelson	Trooper with MSP	30	Often eats “lunch” with night shift Corrections at Jail
9/05/19	Brian Shipman	Corrections Officer	31	
9/05/19	Joseph Spencer	Corrections Officer	32	Neighbor and Friend of Grievant
9/05 & 9/17/19	Kurt Yerrick	Corrections Officer	33	Supervised by Grievant
9/05/19	Joe Williams	Not employed by County	34	Named by Stacie Jolley for MP to Interview
9/05/19	Lauren Shelly	Road Patrol Deputy	35	
9/12/19	Ryan Hall	Patrol Officer	36	Named by Grievant for MP to Interview
9/12/19	Paul Richardson	Deputy	37	
9/12/19	Todd Hunt	Sergeant	38	Friend of Grievant; Was on phone w/ Grievant on 7/18 during incident
9/17/19	Keith Hansen	Sergeant at the time	39	Also wrote 8/04 report to U/S Brancheau (Ex. 17)

Additional information about the investigation conducted by Mr. Pendergraff will be discussed in the subsequent sections of this decision.

On September 18, 2019, Undersheriff Brancheau notified the Grievant in writing that she was being suspended without pay pending the completion of the investigation, after which a predetermination hearing would be held.³⁶

On or about September 21, 2019, Investigator Pendergraff issued his report and findings regarding the investigation.³⁷ His report noted that in addition to considering the above interviews, he also took into account written correspondence between the Grievant and the Sheriff,³⁸ typed

³⁶ Employer Exhibit 40. The POLC grieved the suspension in Grievance 19-97 (Employer Exhibit 46).

³⁷ Employer Exhibit 41. The report lists August 6 as its date. This is the date the investigation commenced, but the findings were apparently issued on September 21.

³⁸ Employer Exhibits 13-15 (Employer Exhibit 41, page 2).

statements from Sgt. Hansen and Mr. Safi,³⁹ the typed Transcript of Undersheriff Brancheau's interview with Deputy Stafford,⁴⁰ the Shiawassee County Neighborhood Watch Facebook Page,⁴¹ and the Grievant's cell phone bill and bank records regarding July 18, 2019,⁴²

On pages 43-45 of Investigator Pendergraff's report,⁴³ he concluded that the Departmental Order 101 Allegations⁴⁴ were all sustained and set forth supporting rationale. The report and findings were provided to Sheriff BeGole and Undersheriff Brancheau.⁴⁵

On October 4, 2019 Undersheriff Brancheau provided the Grievant and her Union Representative with Notice of a Pretermination Hearing Scheduled for Monday, October 7, 2019 at 9:30 a.m.⁴⁶ In pertinent part, the Notice stated:

This is to provide you with notice that a Predetermination Hearing has been scheduled for your benefit on October 7, 2019 at 9:30 a.m. in the Office of the Undersheriff at the Shiawassee County Sheriff's Office. The Predetermination Hearing has been scheduled to provide you with an opportunity to respond to the following tentative findings:

- (1) On July 29, 2019 you emailed Sheriff BeGole stating that you denied taking any photographs of Special Deputy Sam Safi or of an accident scene on July 18, 2019, and that you were being accused of taking pictures of Special Deputy responding at the accident scene on July 18, 2019. You specifically requested that Special Deputy Sam Safi or anyone making accusatory remarks be directed to refrain from making unfounded and non-truthful accusations against you.
- (2) On August 6, 2019, you wrote Sheriff BeGole stating that "These allegations are absolutely untrue and could potentially, if kept up, cause a harmful work environment." The allegations you referred to were those set out in your email on July 29, 2019, where you complained you were being accused of taking pictures of Special Deputy Sam Safi while he responded to a personal injury auto accident scene on July 18, 2019.
- (3) You stated unequivocally during your first interview with Special Investigator Mark Pendergraff that you did not take any photographs of Special Deputy Sam Safi at the accident scene on M-21 on July 18, 2019, or post any photos on social media.
- (4) Investigation of your complaint revealed that you were observed by multiple witnesses to be taking photographs of Special Deputy Safi while he was directing traffic at the accident scene on July 18, 2019 on M-21 near Krogers.

³⁹ Employer Exhibits 17 and 11 (Employer Exhibit 41, page 2).

⁴⁰ Employer Exhibit 16 (Employer Exhibit 41, page 3).

⁴¹ Employer Exhibit 12 (Employer Exhibit 41, pages 3-6).

⁴² Employer Exhibit 41, page 30.

⁴³ Employer Exhibit 41.

⁴⁴ Part 1, General Duties Part J: False Statements; Part 2 General Conduct: Part F: Conduct Unbecoming, Part N: Confidential Information, and Part O: Public Appearances.

⁴⁵ Employer Exhibit 41, page 45.

⁴⁶ Employer Exhibit 42.

- (5) On or about July 19, 2019, you told Corrections Deputy James Stafford that you had observed Special Deputy Sam Safi to be working at a car crash and that you had snapped a picture of it and that Officer Stafford should report the matter to Sgt. Hanson as a non-sworn Officer was working an accident scene. You further stated to Deputy Stafford that it was “bullshit” that Special Deputy Safi was at the accident scene and that “he is not a cop.”
- (6) In order to investigate the Complaint you filed, as well as the Complaint filed by Special Deputy Sam Safi, an Independent Investigator, Mark Pendergraff, was engaged to perform an investigation on behalf of the Sheriff’s Office. On September 3, 2019 and September 12, 2019 during your interviews by the Special Investigator, you were uncooperative and untruthful.
- (7) You falsely told MSP Trooper Spencer Nelson while in Booking at the Shiawassee County Sheriff’s Office Jail, that Special Deputy Sam Safi was policing the crash that took place on July 18, 2019 on M-21 and that Safi was gathering names; (2) gathering participants and witnesses information; and (3) running names through LEIN even though Safi was not a certified Police Officer and not LEIN certified. You further told MSP Trooper Spencer Nelson that Sheriff BeGole was an “idiot,” that he was running things wrong, and that he was going to get jammed up for it and that Sheriff BeGole is just like the “Oakley Police Chief.”
- (8) You have consistently complained and engaged multiple Corrections Deputies and MSP Troopers while on duty at the Shiawassee County Sheriff’s Office about your complaints that Sheriff BeGole hired and specially deputized Sam Safi; the hours that Sam Safi works; the specific responsibilities the Sheriff has assigned to Sam Safi; that Safi is issued a Departmental weapon by Sheriff Begole that Special Deputy Safi failed his firearms class on multiple occasions; that Safi has not completed proper training to operate a police vehicle; that Safi has not been trained in proper police interview techniques; that Safi has access to the LEIN system, which would be a felony if true; that Safi polices actively, including policing vehicle accidents; and that Safi is assigned a patrol vehicle which he is authorized to take home after work.

You should be prepared to respond to each of the above findings with any and all information you wish to have considered prior to a final determination as to what discipline, if any, would be appropriate as to each finding. You have the right to the presence of a Union Steward during the course of the Predetermination Hearing. However you will be required to answer questions and speak for yourself as would be expected of an experienced Corrections Sergeant.

You should also be prepared to offer any and all mitigating circumstances regarding the above findings that you wish to have considered prior to a final determination of any discipline. Please be aware that if it is finally found that you engaged in the described conduct, such behavior could constitute violations of multiple policies of the Shiawassee County Sheriff’s Office Rules and Regulations and/or Policies as follows:

- Department Order 101, Part 1, General Duties, Part J, False Statements
- Department Order 101, Part 2, General Conduct, Part F, Conduct Unbecoming
- Department Order 101, Part 2, General Conduct, Part N, Confidential Information
- Department Order 101, part 2, General Conduct, Part O, Public Appearances

During the Predetermination Hearing, the Grievant had nothing specific to say about the charges except to simply state that “the findings are false and not true.”

On October 17, 2019, the Undersheriff informed the Grievant that she was scheduled for a disciplinary hearing on October 21, 2019 and had the right to Union representation.⁴⁷

On October 21, 2019, Sheriff BeGole informed the Grievant in a Notice of Discipline that her employment was being terminated.⁴⁸ The initial paragraph stated:

You were provided with a Predetermination Hearing on October 7, 2019 to give you an opportunity to respond to and/or explain certain tentative findings resulting from a thorough independent investigation of your complaint. Your response was unconvincing. Your failure to be cooperative and forthcoming when you had the opportunity is inexcusable. You engaged in a pattern of deceptive conduct in violation of your Oath of Office.

The Notice set forth the Employer’s previous eight (8) findings and included some additional verbiage. It stated that:

Based upon the above findings [of the 8 charges] and the destructive effect your conduct has had on the public’s confidence in the Sheriff’s Office, I find that you violated multiple policies of the Shiawassee Sheriff’s Office Rules and Regulations.

It then listed the Four Rule and Regulation and/or Policy Violations which had been previously named and also alleged a violation of her oath of office.

Finally, it concluded:

For all the above reasons, including your serious misrepresentations that Special Deputy Safi uses the LEIN in violation of the law and disruptive effect your conduct had on the Sheriff’s Office and the Jail, your employment with the Shiawassee County Sheriff’s Office is terminated effective immediately. You are to relinquish your badge, guns, uniform and all property of the Sheriff’s Office immediately.

The Union then filed Grievance 19-107 to protest the Grievant’s termination. Both the termination grievance and the suspension grievance were properly appealed to arbitration.

THE EMPLOYER’S POSITION

The County asserted that it possessed just cause to terminate Sgt. McGuckin’s employment.⁴⁹ During the three days of hearing, the County presented seven witnesses: Mark Pendergraff, Sam Safi, James Stafford, Casey Colbry, Robert Brancheau, Cory Carson and Brian BeGole. In addition, the Employer presented an affidavit from Keith Hansen,⁵⁰ as well as a deposition from

⁴⁷ Employer Exhibit 45.

⁴⁸ Employer Exhibit 45.

⁴⁹ For purposes of this decision and award, the suspension grievance will be considered to be part of the termination grievance and they are properly considered together since the suspension ultimately was converted to termination.

⁵⁰ Employer Exhibit 51.

Keith Hansen taken from a separate proceeding involving the Grievant.⁵¹ A brief description of each witness' testimony follows.

Investigator Mark Pendergraff. ⁵² Mr. Pendergraff is a retired Michigan State Police Detective as well being retired from the Shiawassee County Prosecutor's Office. He was loaned out from the Prosecutor's Office to conduct an independent investigation regarding the events surrounding the July 18, 2019 accident on M-21 and its aftermath. Mr. Pendergraff went into detail about each of the persons listed on the chart on pages 11 and 12 in the "Background" portion of this decision. He explained that he interviewed certain individuals more than once. He also considered written statements from Mr. Safi, Lt. Hansen, emails between the Grievant and the Sheriff, and interviews by Undersheriff Brancheau. Mr. Pendergraff testified about the Shiawassee Neighborhood Watch Facebook Page and the photographs and text that appeared on July 26, 2019 and thereafter regarding the M-21 accident and Sam Safi's role in the matter. The Facebook page contained photos taken from the scene.⁵³ It alleged, inter alia, that Mr. Safi was "operating outside the scope of his authority, interjecting himself into homicide investigations and destroying evidence, responding to crash scenes and also has access to the LEIN system."⁵⁴

Mr. Pendergraff's testimony discussed his interviews and his impressions of those interviewed. When he interviewed Fred Atkins⁵⁵ of All-Star Towing on August 7, 2019,⁵⁶ Mr. Atkins said he saw the Grievant near the scene sitting in her black SUV. He said Sam Safi nudged him and pointed out that the Grievant was holding her phone up and Atkins saw that it was, but he said he did not know what she was doing. Atkins said he was familiar with who the Grievant was, since his family has been friends with her brother and her father. He drew a diagram of the scene showing where his wrecker was, where Safi was, and where the Grievant's car was while she was in it.⁵⁷

Next, Pendergraff reviewed his August 7, 2019 interview with Richard Gokee, the owner of All-Star Towing who is Mr. Atkins' boss. Gokee said he works on the McGuckin vehicles. Gokee told Pendergraff that before his interview with Pendergraff, Dennis McGuckin phoned him and questioned him.⁵⁸ Gokee had posted about the presence of dashcams in the wreckers on the Facebook site but told Pendergraff that he was "just feeding the fire." Gokee said that Dennis wanted to know if Gokee knew who took the photos; he told Gokee "that somebody had taken pictures and was accusing his sister of taking the pictures..." Gokee told Pendergraff that he (Gokee) had gone to school with Dennis and Kathleen McGuckin.

⁵¹ Employer Exhibit 52.

⁵² Investigator Pendergraff was the first witness presented by the Employer. He was the only witness to testify on the first day of hearing and his testimony continued well into Day 2. His testimony spans 293 pages of the transcript. For the sake of efficiency, if the individual who Investigator Pendergraff interviewed also testified at the subject arbitration hearing, their testimony is included after the summary of their interview with Pendergraff.

⁵³ As well as a photo taken of Mr. Safi at another accident scene on a different date.

⁵⁴ Employer Exhibit 12, page 4.

⁵⁵ Employer Exhibit 18 has his name spelled "Atkins" while Exhibit 41 uses a spelling of "Adkins."

⁵⁶ During the record, some additional information regarding towing companies used by the County and allegations that the County was not rotating its use of various towing companies was revealed. This information was not shown to have relevance to the subject investigation and certainly did not prove that the employees of the towing company that was used at the scene of the July 18 accident were any more or less credible.

⁵⁷ Employer Exhibit 18.

⁵⁸ Oddly, Gokee said the call was at 12:56 p.m. on June 28 (Employer Exhibit 19, page 5). Dennis is one of the Grievant's brothers.

Mr. Pendergraff discussed the interviews that were conducted with Corrections Officer James Stafford.⁵⁹ Stafford reported to Sgt. McGuckin. Stafford told Brancheau on July 30 that he had spoken to McGuckin on about July 19, 2019, while she was on vacation and she purportedly told Stafford that she saw Safi and believed he was working the accident scene and that “she had gotten a picture of it.”⁶⁰ Pendergraff interviewed Stafford on August 7, 2019 and Stafford said that McGuckin wanted him (Stafford) to see what Hansen thinks about it. Stafford told Pendergraff that he (Stafford) mentioned it to Hansen the weekend of the accident⁶¹ and that Hansen told him not to repeat it to anyone. Stafford said that Hansen later showed Stafford the photos after they were posted on the Facebook page, but Stafford said he had never seen them before that. Stafford also said that on August 3, McGuckin, he, MSP Troopers Nelson and Traver, and possibly Deputy Yerrick were eating dinner at the Jail and McGuckin told them that she tried to take a picture of Safi at the accident scene, but she was not able to.

Stafford told Pendergraff that the Grievant told him on July 19, that it was “bullshit” that Safi was out there (at the scene of the July 18 accident) because “he’s not a cop.”⁶² Stafford told Pendergraff that the Grievant told him she had issues with Safi and what he is allowed and not allowed to do.

James Stafford’s Testimony. Deputy Stafford testified that he has been with the County since November of 2016 and that he is a certified Corrections Officer. He said he previously worked at the Isabella County Sheriff’s Office and at the Saginaw County Sheriff’s Office. He said he reported to the Grievant, who was the Sergeant on his shift. He said that the Grievant never spoke negatively about Sheriff BeGole to him. Stafford said he was interviewed by Undersheriff Brancheau.⁶³ He stated that he told Brancheau that he spoke to McGuckin when she was on vacation, and she told him that she had taken a picture of Safi at the accident scene and that others there had also snapped a picture of it. Stafford said he thought she was concerned that Safi had responded to an accident. Stafford said the Grievant asked him to mention it to Keith Hansen. Stafford said he told Hansen, and Hansen directed Stafford to keep it to himself for now. When asked why McGuckin did not just talk to Hansen herself, Stafford said because he (Stafford) has a rapport with Hansen. Stafford said McGuckin never showed him the pictures, but Hansen showed them to him after they appeared on Facebook. Stafford said shortly after his interview with Brancheau, the Grievant gave Stafford a permanent assignment to Work Release.⁶⁴ Stafford said a few days after his interview with Brancheau, Pendergraff interviewed him. With regard to eating dinner with the troopers when he was at the jail, he said the Grievant told Troopers Travers and

⁵⁹ The Undersheriff had first interviewed Stafford on July 30, 2019 and then Pendergraff interviewed him on August 7, 2019.

⁶⁰ Employer Exhibit 16, page 2.

⁶¹ Stafford said he mentioned to Hansen that the Grievant potentially had a photo but admitted that she never told Stafford to say anything about her having a photo. Stafford told Pendergraff that he passed that information along on his own (Employer Exhibit 20, page 10).

⁶² Employer Exhibit 20, page 8; T. 100. (“T” refers to the transcript for the hearing and is followed by the page number of the transcript; no volume number is used for the transcript, since the pages are numbered consecutively from each day of hearing to the next).

⁶³ Employer Exhibit 16. Stafford testified that the exhibit was still accurate.

⁶⁴ Stafford said that normally the corrections officers rotate the work release assignment, but his assignment was every night.

Nelson that she tried to take a picture of Safi at the accident scene. Stafford said that when she told him earlier that she had taken a photo of Safi, Stafford could not remember if it was a single photo or more than one. He said she said she thought Sam being out there was “bullshit.” Pendergraff said he believed that Stafford was being truthful, and Stafford had even volunteered to take a polygraph.⁶⁵ In addition, he noted that Stafford said that the Grievant had him transferred to Work Release from the jail after he had cooperated in the Undersheriff’s investigation.⁶⁶

Pendergraff testified that he interviewed Sgt. Casey Colbry.⁶⁷ The interview took place on August 13, 2019; Colbry was the Assistant to the Jail Lieutenant at the time. On August 3, 2019, the Grievant told Colbry that her name was being thrown out on Facebook as supplying pictures of Safi, but she denied taking photos of Safi to Colbry. Colby stated that the Grievant had been unhappy that Safi got to wear a Class A uniform to a funeral when Corrections Officers could not wear this type of uniform.

Staff Sergeant Casey Colbry’s Testimony. Sgt. Colbry testified that he has worked for the Sheriff’s Department for 20 years and that he is good friends with the Grievant and her family. He said he was the Grievant’s immediate supervisor, and he is the Assistant Jail Administrator and was during the time in question.⁶⁸ He said that on occasion he heard McGuckin complain about Safi, but he could not recall her complaining about the Sheriff. He said once she complained that Safi wore a Class A uniform to a funeral, also that he carried a Department issued weapon home and that he was driving a marked vehicle. He said she was just venting because Safi was not a sworn police officer and these things “didn’t look right.” He said he reviewed pages 10 and 11 of Employer Exhibit 41 and they were accurate.

In addition, Pendergraff testified he reviewed Safi’s written statement⁶⁹ and interviewed Safi twice, once on August 13, 2019, and once on September 12, 2019.⁷⁰ Safi said he was driving back from the repair shop on July 18, 2019 after having had the vehicle’s air conditioning fixed⁷¹ and he observed a crash that had just occurred on M-21 in front of the Kroger. He activated the vehicle’s emergency lights and used his cell phone to call dispatch and requested police, fire and EMS to the scene because the driver of one vehicle appeared to have injured her wrist. Safi said he saw Kathy McGuckin in her car, and he waved to her, but she did not wave back. Safi said he saw McGuckin in her car taking pictures of him on her cellphone and texting. Pendergraff said he had Safi draw a diagram of the scene.

⁶⁵ T.97-98.

⁶⁶ But apparently, by the time of the commencement of the arbitration hearing, Stafford was no longer working Work Release.

⁶⁷ Employer Exhibit 21.

⁶⁸ As such, he reports to Lt. Tamie Wilson.

⁶⁹ Employer Exhibit 11.

⁷⁰ Employer Exhibit 22.

⁷¹ Taking vehicles for repair is part of the job description for Safi’s position (Employer Exhibit 8).

Sam Safi's Testimony. Mr. Safi testified that he is employed as the Fleet Supervisor for the Shiawassee County Sheriff's Department, that he takes care of every car (at least 17) for the Department, and that he has been working for the Department for 5-6 years. Safi said he has known Sheriff BeGole for about 20 years, and they are friends. Safi testified that he was deputized and that he loves his job. He said he reported what happened at the accident to the Sheriff and to Lt. Corey Carson after he got back to the Department on the date of the accident. He said he also wrote Employer Exhibit 11 the day after the July 18 accident and explained everything that happened. In it, he stated that Kathy McGuckin was taking photos of him, and he saw her doing this. He said he knew something would happen from this. Safi said that rumors have been spread that he is being treated special, but in fact, more is expected of him; at work, the Sheriff is his boss.

Safi said that he was driving back to the Department when he saw the accident happen in front of him and "he had no choice but to react." He said he called in the accident to dispatch and saw the woman holding her wrist in one of the cars. He said he did not interview anyone from the accident and even told the woman in the road who said she witnessed it, to wait for the police to arrive. He said he put his car's emergency lights on and directed traffic to avoid another accident since the eastbound lane was blocked. He said he was wearing khakis and a black shirt and did not look like a patrol officer. He said Lt. Carson and Sgt. Brandon Worrall later arrived.⁷² He said he saw McGuckin on the exit of the Kroger gas station and he waved at her, but she did not acknowledge him. Safi said he saw McGuckin holding her phone above her steering wheel by the two ends of the phone, and she stayed there for 2-3 minutes taking photos of him. He said she took the photos before Carson arrived. He said both Worrall and Carson expressed appreciation to him for assisting.

Safi testified that a week after the accident, he saw pictures of himself on Facebook and that his photo in the circle on Facebook was his head on another guy's body, but he did not know who the guy was. He went into some detail about the repercussions that resulted from the Facebook page. He said both his kids got picked on in the Owosso schools (they were 17 and 16 at the time of the posting and in high school). His daughter did not want to return to school so has been home schooled ever since. His son was tormented in school, but now is in college. He said his wife worked a job in Owosso for 20 years but was picked on and had to change jobs and now works in Flint. He stressed that he never pretended to be a police officer.

Mr. Pendergraff explained that he interviewed the Grievant's brother, Timothy Kevin McGuckin⁷³ because an hour and a half into her September 3 interview, the Grievant told Pendergraff that she knew who took the pictures—her brother Tim. Pendergraff said he phoned Tim McGuckin on September 3 afterwards and Tim said he took the pictures.⁷⁴ During the September 4th interview with him, he told Pendergraff that he spoke with his sister yesterday before her interview. During his interview with Pendergraff, he stated:

⁷² Safi said Carson arrived before Worrell; Safi testified that the tow trucks (All-Star and Maximum Towing) arrived after Carson got there. Safi said he thought the Grievant took pictures before Carson arrived (T. 358-359).

⁷³ Employer Exhibit 23.

⁷⁴ Tim also said he called Brian (BeGole) on September 3 and told him that he took the photo(s). The Grievant had been interviewed by Pendergraff earlier on September 3.

Before the meeting yesterday [the Grievant's interview by Pendergraff], she called me asking me how these things go, because she knows I've been a union rep for deputies and now sergeants for over a decade. So um, she was asking me how it goes. And I explained like I said to you yesterday [over the phone], that you're the representative of the Sheriff, so if all in purposes of that meeting, you're basically the Sheriff. You can compile a statement from her and things like that. Well, she's worried that you guys weren't going to believe her and I, I said, just tell them I took the picture. And she's like, what? I'm like, tell ah, I took the picture, Kathleen. So, she had really no reason not to believe me. But I never, I, I had no involvement in this (inaudible). None. I was there to collect money from her...

So, I was there to pick up the money. I didn't take any pictures. You know, I, I told her to say that to, to, to help ease her mind, because she said she told me she never took the pictures. She had no involvement with it...

...

You know. I don't know Sam. I don't know who this guy is or what his role is or anything like that. I've never met him. I don't believe I've ever met him...

Pendergraff said that on September 11, he and Undersheriff Brancheau drove to Lapeer County to interview Tim McGuckin one more time. At that time, Tim expressed regret for initially being untruthful to the Sheriff in order to protect his sister.⁷⁵

Pendergraff testified that he conducted two interviews with the Grievant and that she had her Union Representative, Chris Watts, present.⁷⁶ The first interview was on September 3, 2019. Pendergraff said the Grievant had been provided with another copy of General Order 102 and was informed that he was to be considered as a designee of the Sheriff.⁷⁷

During the interview, the Grievant said that on July 18 she pulled through the ATM to get money to give to her brother Tim. She said she was on the phone at the time with Sgt. Hunt. She said she saw her brother for "2 seconds" and when she pulled around the bank out to 21, she saw there had been a crash and Sam was standing out by the police car and there was a lady in the middle of the road; she said Sam waved at her.

In his testimony regarding his interviews of the Grievant, Pendergraff characterized her as cooperative in some respects, not always truthful, and evasive.⁷⁸ He said she denied taking the photos. She described the woman in the road, The Grievant said she (McGuckin) had to pull out because there was a black truck behind her; but she did not know which vehicle she was driving. Pendergraff said the Grievant said things like, "I wasn't there long enough to form an impression [about what Safi was doing]," she said something like she did not recall, and "I don't know why I would do that." Pendergraff said the Grievant's recollection was different than that of Safi and Atkins. She said she did not know which vehicle was the old K-9 vehicle, but others interviewed

⁷⁵ Tr. 139. Pendergraff explained that he learned that the rest of the Grievant's family is friends with Sheriff Begole.

⁷⁶ Lt. Cory Carson was also present.

⁷⁷ Undersheriff Brancheau sent the Grievant a memo on August 29, 2019 to advise her of the September 3 interview with Pendergraff and to provide her with another copy of Policy 102 (Employer Exhibit 24, p.1)

⁷⁸ T. 145.

said she knew it. The Grievant said that Stafford was lying about their conversation on July 19. Pendergraff said he created a spreadsheet so track the Grievant's inconsistencies.

In the grievant's interview, Pendergraff, at one point, asked if she would give him her phone to see if there was evidence of the photos on it, but she did not want to give it up, even when Pendergraff said he would get it back to her as soon as possible. A break was taken so Pendergraff could check into how quickly MSP could return her phone. When he returned, she offered to let him look at her phone right there, but Pendergraff said he did not have the forensic knowledge to examine it. She said she would let him know the next day, but Pendergraff testified that he could not account for what might happen to the contents of the phone in the interim. He said she made clear that she did not take or post the photos and that she had no concerns about Safi or his role.

Pendergraff said his interview with the Grievant was two-pronged: first to see if there was a hostile work environment, and second to see if she was not truthful. The Grievant denied talking to Stafford soon after the crash scene, but said she later told him she saw Sam at the scene. She was adamant that she did not tell Stafford to contact Hansen and that she took no pictures of Safi at the scene or told Stafford that she did. She maintained that Stafford "has his own motives" and that he has been caught in many lies and that he wants the Grievant's sergeant position. She said she kept a log at home.⁷⁹ She said Stafford and Hansen are "really close" and that "Hansen's had an issue with Sam Safi for a long time."⁸⁰ She said she did not trust Stafford or Hansen.⁸¹ When asked about telling the troopers that she had tried to take a photo, but it didn't work, she replied, "I don't think so." She said someone told her that her name was on the Facebook page as having taken a photo; she said her name was not there when she went back to look. She said her brother Dennis told her to "just get ahead of it and just tell the Sheriff what is going on" so that is why she sent the email to the Sheriff. At the end of the interview Pendergraff told the Grievant she was being accused of lying to the Sheriff regarding taking pictures at the crash. She said she was 100% truthful with Pendergraff.⁸² Then she told him she knew who took the pictures. She said it was her brother Tim and "he sent them to whoever to find out who the guy was." She said he told her he did not know how they got on Facebook.

In between her first and second interviews, the Grievant called Pendergraff back and asked him questions about letting him have her phone analyzed. Regarding the September 18, 2019 interview, Pendergraff said that he told the Grievant that if she took and passed a polygraph the case would be closed.⁸³ She declined both the polygraph and turning over her phone.⁸⁴

Pendergraff said that on September 4, he interviewed Tia Lang, a Corrections Deputy on the night shift.⁸⁵ Lang said the Grievant mentioned the crash and seeing Safi with his vehicle's lights

⁷⁹ Employer Exhibit 24, page 20 -21. There is no indication in the record that the logbook was subsequently provided to Pendergraff.

⁸⁰ Employer Exhibit 24, page 22

⁸¹ Employer Exhibit 24, pages 22-23.

⁸² Employer Exhibit 24, page 44.

⁸³ He said the Sheriff offered to pay for the polygraph. BeGole told Pendergraff that he hoped that it was not the Grievant who took and posted the photos and the Sheriff asked why not just apologize and try and makes things right?

⁸⁴ The Grievant's testimony will be reviewed under the Union's Position Section of this decision and award.

⁸⁵ Employer Exhibit 25.

on and that McGuckin said she was on the phone. Lang told Pendergraff that McGuckin told her McGuckin was accused of taking pictures, but that she did not take any. Pendergraff said he forgot to ask Lang about Stafford's alleged truthfulness, so he followed up on September 12 by phone. Lang said she had lots of issues about Stafford's honesty; that he will "make stuff up" and that she "has caught him in many lies personally" and she provided at least one example.

Pendergraff said he interviewed Sam Wells and Cindy Livingston.⁸⁶ Wells was a Corrections Deputy on the night shift who reported to the Grievant. Wells said he did not even know who Safi was. When asked, Wells said knew of some instances where Stafford "twisted" the truth.

Cindy Livingston was interviewed on September 4 by Pendergraff. He said that her interview was not particularly relevant for the purpose of the arbitration hearing.⁸⁷

Pendergraff testified that he interviewed Stacie Jolley.⁸⁸ He said Jolley contacted him saying that she had information regarding the investigation. None of her information about the Facebook page or the pictures was first-hand.⁸⁹

Pendergraff testified that he interviewed Jacob Travers, a Trooper with MSP,⁹⁰ with regard to the discussions at the jail during lunch. Travers said the Grievant mentioned a possible leak at the County; that information about internal things was getting out to people on the Facebook page and that some people believed that she was behind it. He said she denied everything. McGuckin said she did not know who was accusing her. Travers said the Grievant stated that Safi was not qualified to be out there. Travers said he never met Safi and was not familiar with his qualifications. Travers said that the Grievant commented on the Sheriff accusing people of bullying him on the Facebook page, that BeGole was responding to the people through the media and was "just feeding into what they want."

Next, Pendergraff discussed his interview with MSP Trooper Spencer Nelson.⁹¹ Nelson also participated in eating lunch at the jail with the Grievant and Corrections Deputies. Nelson remembered talking to McGuckin and possibly Stafford about the accident on M-21 and he said that some photos got sent in to the Repeater page. When asked what he recalled specifically about what the Grievant said about Safi's participation there, Nelson stated that McGuckin said Safi "was out there gathering names, info...using info, running LEIN."⁹² Nelson said that he and Trooper Travers asked if Safi was ever LEIN certified because their understanding was that he was not a certified police officer. Nelson said McGuckin "was very adamant that she never took those pictures or was feeding any information because...she has [better] things to do with her time, rather

⁸⁶ Employer Exhibits 26 and 27.

⁸⁷ T. 196.

⁸⁸ Employer Exhibit 28.

⁸⁹ T. 197.

⁹⁰ Employer Exhibit 29.

⁹¹ Employer Exhibit 30.

⁹² Employer Exhibit 30, pages 2-3. T. 207.

than gossip about this.”⁹³ He did not recall the Grievant saying she tried to take the picture, but it didn’t work. Nelson said the Grievant never indicated that she was an administrator of the Facebook page and was insistent that she never contributed to it or knew who is leaking information to it. Nelson told Pendergraff that in discussions with McGuckin, she had been critical of the Sheriff. She told Nelson, “he’s an idiot” and that he and Oakley Chief were buddies and “he’s just like him.”⁹⁴ Also, she said she has been accused of making allegations to make the Sheriff look bad and she has been accused of having her brother run against him for Shiawassee County Sheriff.

Pendergraff testified about interviewing Corrections Officer Brian Shipman on September 5, 2019.⁹⁵ Shipman said he was up north, and his fiancée pointed out the Facebook page about Sam Safi. He said that in conversations, it is noted that Safi is on accident scenes with a full uniform and a marked police unit. Shipman said he believed that the Corrections people including McGuckin know which patrol vehicle is the old K-9 vehicle since it is black and has Vader’s sticker⁹⁶ on it. He said that the Grievant said she was talking on her cell phone to Sgt. Hunt when she saw the accident scene. Shipman also mentioned that the day before his interview, McGuckin told him that she was being investigated over the pictures.

Pendergraff testified that he interviewed Corrections Officer Joseph Spencer on September 5, 2019.⁹⁷ Spencer said that he does not follow social media, but his daughter does and tells him about it. He said he has not seen the photos posted on Facebook of the July 18 accident. He said he is a neighbor and a friend of the Grievant.

Corrections Officer Kurt Yerrick was interviewed by Pendergraff on September 5, 2019 and on September 17, 2019 (by phone).⁹⁸ Yerrick said that McGuckin was his boss; she mentioned seeing Sam Safi at the subject accident scene and said she waved at him. Yerrick said she specifically said that she did not take pictures of Safi and she hoped she did not get accused of taking them. He said he kept track of the Facebook page. He said the Grievant never said she tried to take pictures of Safi. In the second interview, Pendergraff asked him about Deputy Stafford’s truthfulness, and he told Pendergraff that Stafford likes to tell stories and that the troopers had discredited Stafford.

Also, Pendergraff interviewed Joe Williams on September 5, 2019, since Stacie Jolley had suggested it.⁹⁹ Williams said he goes on the Facebook page to see what they are saying about the Sheriff, and he remembered seeing the photos from the accident.

⁹³ Employer Exhibit 30, page 3.

⁹⁴ Employer Exhibit 30, page 5. T. 214-215.

⁹⁵ Employer Exhibit 31.

⁹⁶ Vader was a previous K-9 with the Department.

⁹⁷ Employer Exhibit 32.

⁹⁸ Employer Exhibit 33.

⁹⁹ Employer Exhibit 34.

In addition, Pendergraff testified about interviewing Deputy Lauren Shelley of the Road Patrol on September 5, 2019.¹⁰⁰ He said he was familiar with the Facebook page and had seen the pictures of Safi at the accident on it. Shelley said there were rumors that the Grievant had taken the photos, which he heard from Keith Hansen, but the Grievant did not confirm them. He said he believed the Grievant said she did not agree with Safi being able to do the things he does. Shelley said that the night before his interview McGuckin told him, “Stafford’s coming after me for my job...Mark Pendergraff’s interviewing you (Shelley) about pictures that he’s claim[ing]...Stafford is claiming that ...[I] took and posted on the website...”¹⁰¹

Pendergraff said that on September 12, 2019, he interviewed Patrol Officer Ryan Hall¹⁰² because the Grievant gave him Hall’s name. Hall said that friends often mention the Facebook page to him, and he did see the photos and article about Sam Safi at the accident. He said he did not know who took the photos, but the rumors indicated that it was the Grievant and that she then was to have posted them on the site.¹⁰³ Hall said that the Grievant had made comments to him that Stafford wants her job and that he’ll throw everybody under the bus to get it.¹⁰⁴ Hall said that Stafford previously worked at the Isabella County Jail and when he and Deputy Richardson did a warrant pick up there, the corrections staff there “had nothing good to say about him.”¹⁰⁵ Hall told Pendergraff two instances that the Isabella Corrections Officers mentioned regarding Stafford. Also, Hall mentioned that Stafford was to have been bragging about being on BAYONET, but it turned out that he was not truthful about it.¹⁰⁶ Hall said that Lauren Shelly told him that Stafford got him (Shelly) in trouble for supposedly interrogating Stafford.¹⁰⁷ Hall said he saw a photo of the accident on Facebook and under it, it said courtesy of Kathy McGuckin, but the next day the credit was taken down.

Pendergraff testified that he interviewed Deputy Paul Richardson on September 12, 2019.¹⁰⁸ Richardson corroborated what Hall had told him about what the Isabella County Officers had to say about Stafford. Richardson also mentioned that a Corrections Officer in Saline asked what was going on in Shiawassee County. Richardson said he never saw the Facebook pictures and did not know who took them. Prior to his interview, he said he saw McGuckin in the hall at work and she said she was being accused of taking pictures that she did not take and posting them on that site, and she said she threw Richardson’s name out about the Isabella County story. Richardson said its not unusual for one or two people not to like someone, but here everyone (like 4 or 5 people) is saying that Stafford was “a tool.”¹⁰⁹

¹⁰⁰ Employer Exhibit 35.

¹⁰¹ Employer Exhibit 36 page 3.

¹⁰² Employer Exhibit 36.

¹⁰³ Employer Exhibit 36, page 2.

¹⁰⁴ Employer Exhibit 36, page 2.

¹⁰⁵ Employer Exhibit 36, page 3.

¹⁰⁶ Employer 36, page 5.

¹⁰⁷ Employer 36, page 6.

¹⁰⁸ Employer Exhibit 37.

¹⁰⁹ Employer Exhibit 37, page 5.

Pendergraff interviewed Todd Hunt on September 12, 2019.¹¹⁰ Hunt confirmed that he is a friend and colleague of Kathy McGuckin and that he was on the phone with her on July 18, 2019 for 63 minutes. He said he called her. Hunt said that the Grievant said there was an accident and that Safi's there and he waved; she did not say anything about meeting her brother. He said he was not aware of being put on hold by McGuckin or McGuckin sending texts while on the phone with him, or if she went on Facebook during the call. He also said there was no indication that McGuckin was taking pictures at the time. Hunt said he does not have Facebook. He said McGuckin never said if she knew of anyone else taking pictures at the accident scene, nor did she indicate if she was an administrator of the Facebook page or knew who was. He said they never talked about the Facebook page. He said she did not complain to him about Safi, but that she "probably" complained about Stafford.¹¹¹ Hunt said that the Grievant never talked about this thing with her brother initially stating that he had taken the photos.

Pendergraff said he also interviewed Sgt. Hansen on September 17, 2019, and what he heard from Hansen was consistent with what Stafford had said.¹¹² Hansen said Stafford came to him on July 19 and said McGuckin had asked Stafford to come to Hansen about pictures on her phone. Hansen told Stafford not to get involved and not to discuss this with anyone. Hansen said he thought it was odd that she would want his advice. He said he did not come forward earlier with what Stafford told him because he did not know if anything would come of it.

Hansen added that he and McGuckin have a "working relationship" but have had some issues in the past. He said when he saw the Facebook posting he contacted Undersheriff Brancheau and provided a written statement on August 4, 2019.¹¹³ In addition, Hansen noted that McGuckin "has had a huge issue with Sam in the past and the things he's been allowed to do."¹¹⁴ Hansen explained to Pendergraff that McGuckin has been a proponent of allowing booking officers to do more police-type duties and when she sees Safi being able to do them it upsets her.¹¹⁵ Among other things, she has a problem with Safi carrying a Department issued weapon since booking transport officers are not allowed to take their weapons home, but Safi is able to. Hansen said that McGuckin said she does not believe it was right for Sam to using the marked K-9 unit vehicle.¹¹⁶

Hansen said Stafford was "strait-laced" and "by the book" and he never knew him to be dishonest. Moreover, Hansen said that Stafford was not even eligible for promotion.¹¹⁷ Pendergraff noted that Hansen and Stafford had a personal friendship. With regard to the Facebook page, Hansen pointed out that it mentioned inside information that only certain people would know. Hansen said that McGuckin's brother Dennis was going to run for Sheriff, so she was against

¹¹⁰ Employer Exhibit 38.

¹¹¹ Employer Exhibit 38, page 8.

¹¹² Although Hansen had apparently been slated to testify at the subject arbitration, the County said he was unavailable due to previously scheduled annual training that was taking place in another County. Instead, Hansen's affidavit was submitted into the record (Employer Exhibit 51) and a 2020 deposition of Hansen from litigation involving the Grievant was submitted into the record (Employer Exhibit 52). The Union objected to the affidavit since Hansen would not be available for cross-examination, but the Arbitrator admitted it for what it was worth. T. 462-463.

¹¹³ Employer Exhibit 17.

¹¹⁴ Employer Exhibit 39, page 3.

¹¹⁵ Employer Exhibit 39, page 3.

¹¹⁶ Hansen said she made this remark before the M-21 crash scene.

¹¹⁷ Employer Exhibit 39, page 8.

BeGole, but once Dennis was not running, she supported BeGole. Hansen completed his interview with the statement that he “wholeheartedly” believes in Stafford and that “he has no reason to make anything up.”

Investigator Pendergraff testified that he summarized his investigation and presented his findings to the Sheriff and Undersheriff.¹¹⁸ In it, he described his initial meeting with Undersheriff Brancheau, his consideration of the letters between McGuckin and the Sheriff, the typed statements from Sgt. Hansen and Special Deputy Safi, the Neighborhood Watch posts and photos concerning the July 18 accident and comments about Sam Safi, the interviews that he conducted, his conclusions regarding the investigation, his rationale for sustaining the four Departmental Order 101 allegations¹¹⁹ and some additional photos of the accident area taken on a subsequent date.

Pendergraff testified that the intent of the investigation was to determine if the Grievant lied to the Sheriff in her Complaint to him, and if there was evidence of a hostile work environment.¹²⁰ Moreover, Pendergraff pointed to some inconsistent remarks from the Grievant regarding whether she knew the vehicle Safi had been driving was the old K-9 vehicle. In addition, Pendergraff concluded that whoever wrote the Facebook posting had a host of internal knowledge about the Department and Sam Safi. He also noted that the photographs posted on the Facebook page were consistent with where Mr. Safi saw the Grievant parked near the scene. Pendergraff pointed out that McGuckin’s brother Tim had initially asserted that he took the photos of the scene, but later recanted and claimed that his sister did not know that his original claim was untrue. In addition, not until the end of her first interview, did the Grievant even mention that her brother had told her that he had taken the photos. The investigator also stressed that the Grievant also admitted to calling the Sheriff an “idiot” in front of troopers, and the troopers explained that the Grievant told them that Safi interviewed witnesses, gathering names and information and ran LEIN. The Employer also maintained that the record indicates that the Grievant had issues with Mr. Safi, his uniform, his ability to take home his firearm, and that he drove departmental vehicles home.

Former Undersheriff Robert Brancheau. Former Undersheriff Brancheau testified at the arbitration hearing. He said he spent 21 years in the Sheriff’s Office and 4 years as Undersheriff under Sheriff BeGole. He said he retired in December of 2020. Part of his job as Undersheriff included handling predetermination hearings and participating in Internal Investigations.

Brancheau said that Stafford told him about the Grievant telling Stafford that she took photo(s) of Safi and about wanting Stafford to ask Hansen for advice. He said the Department had concern about the Facebook site since it seemed that someone was posting internal Department information. He said the post discussed disciplinary action, what vehicles Department people were issued, and that an employee had failed range certification. He said that Hansen provided a written statement to him after he (Brancheau) requested one.¹²¹ He said he interviewed Stafford after he

¹¹⁸ Employer Exhibit 41.

¹¹⁹ Employer Exhibit 41, pages 43-45.

¹²⁰ T. 300. At the hearing, Pendergraff noted minor corrections that he would make to his findings (T. 186-194) regarding whether the Grievant said Safi was talking to the woman in the middle of the road and regarding what direction the pictures were taken from (the exit lane and not from the area west of that exit).

¹²¹ Employer Exhibit 17. He also said that the transcript of his interview with Stafford (Employer Exhibit 16) was accurate and complete.

had seen the Facebook posting of Safi at the accident. He said the post said Safi was interviewing people at the scene, but Brancheau knew that he was not interviewing, but just helping out. Brancheau said he advised the Grievant of the internal investigation.¹²² He testified that the investigation was to address whether false statements were made. He said that the Sheriff forwarded to him the email that the Sheriff received from the Grievant. Brancheau said that the Grievant's email was viewed as a formal complaint, which would be investigated. He said that the Grievant's written response to the Sheriff dated August 6, 2019 was forwarded to him.¹²³ Brancheau said he contacted the Michigan Sheriff's Association to see if its Mission Team could perform the investigation, but they were not available for various reasons, but the County Prosecutor's Office said it had an investigator available, and Brancheau requested that the investigator (Pendergraff) be released. Brancheau said he contacted Pendergraff and gave him the information that he had.

Brancheau said the part of the investigator's report regarding meeting with him was accurate¹²⁴ and that he reviewed Pendergraff's conclusions¹²⁵ after the report had been submitted, and he and BeGole went over the findings.¹²⁶ Brancheau said he did not disagree with the report. He added that he provided the Grievant with notice of her Predetermination Hearing and noted that the notice included eight (8) numbered concerns.¹²⁷ He said at the Predetermination Hearing the Grievant was present with her Union Representative Chris Watts. He said McGuckin did not want to make a statement or explain anything; she simply responded that the findings were not true. When he (Brancheau) then told her that the Predetermination Hearing was over, she muttered, "it's fucking bullshit."

Current Undersheriff Cory Carson. Carson testified that he has been with the Department for 25 years and became Undersheriff in January of 2021. He said as of July 18, 2019, he was the Lieutenant in Field Services and was dispatched to the scene of M-21 accident and was the first responder to arrive at the scene. Carson said he did not see anything about Safi at the scene that caused him concern then. He said when he returned to the office after the accident, Safi came to see him and told him that McGuckin was taking photos at the scene, and Safi was concerned that the Grievant might misrepresent the events that day so as to discredit the Sheriff and the Sheriff's Office. Carson said he told Safi to remember where he was and where she was, and to keep his mouth shut and see what happens. Carson said he had not heard the Grievant criticizing Safi but had heard that she did from other employees. Carson said that Trooper Spencer Nelson had said that the Grievant told him at the jail that Safi was running names through LEIN.¹²⁸ Carson said that on August 29, 2019 the Sheriff came to him to do a LEIN investigation and gave Carson a letter from the State of Michigan identifying Safi due to a complaint they received that Safi was accessing LEIN. Carson found out that the allegation was that Safi was assigned a patrol car that had access to LEIN. Carson said he investigated the allegation by talking to I.T. and the 9-1-1 Director and determined that Safi had no access to the control switch and passwords to utilize the

¹²² Employer Exhibit 24.

¹²³ Employer Exhibit 15.

¹²⁴ Employer Exhibit 41, page 1.

¹²⁵ Employer Exhibit 41, page 43-45.

¹²⁶ Brancheau added that he was formerly a steward for the Teamsters who represented corrections officers and road patrol and represented grievants in arbitration and handled collective bargaining.

¹²⁷ Employer Exhibit 42.

¹²⁸ Employer Exhibit 30. September 4, 2029 interview of Nelson by Pendergraff.

LEIN system. He said there were two letters—one of the alleged LEIN violation, and one a clearance letter finding there was no violation.¹²⁹ He added that every 2 years training must be completed on LEIN and a LEIN certification test must be taken.

Sheriff Brian BeGole. Sheriff BeGole testified that he is currently serving his second elected term as Shiawassee County Sheriff. He has been with Shiawassee County in some capacity for 26 years and has been in law enforcement for 37 years. He stated that he has known the Grievant for a long time and has been friends with her father and her brothers.

Sheriff BeGole said that right after the July 2019 accident, Sam Safi called him and then came to see him. According to the Sheriff, Safi was upset and distraught because he had been belittled on the Facebook page in the past, even though he had previously donated thousands of hours volunteering in the Department and the community. The Sheriff said Safi told him that he had witnessed McGuckin photographing him at the scene, and he did not know what would be done with the photos. BeGole said for Safi to calm down; there was nothing wrong with her taking pictures; there is nothing illegal about taking the photos, and they would see if anything happened. BeGole stated that he had created the position that was filled by Safi. The job involves the care and upkeep of patrol cars, welding, fabricating for cell doors, removing stripping from cars, etc. The Sheriff explained that Safi was provided the temporary use of a Class A uniform to wear when he attended the funeral of a judge's son. He said the Grievant wears a Class B uniform; he did not understand why people were making such a fuss over Safi's uniform. The Sheriff said that Safi does not have a "take home" car but that sometimes Safi takes a vehicle home in order to work on it with his own equipment. Moreover, he said that Safi was erroneously issued a Department weapon, but when BeGole found out, it was taken back. He did note that Safi has a CPL and is allowed to carry his own gun. BeGole said that he has been trying to allow corrections officers to do more than the previous Sheriff allowed.

With regard to the July 26, 2019 Repeater Facebook posting, the Sheriff noted that the County has a population of 68,000 and 17, 000 are on the Facebook page. The Sheriff said that the page is always ridiculing Safi or himself for hiring Safi. He said they put Safi's head on a Deputy Dufus body from a movie. BeGole said there were many occasions, even before this, where Safi was ridiculed on the Facebook page, and it was disheartening that Safi's family was so affected by the Facebook postings. He said the Facebook page had even been shut down in the past by Facebook for inappropriate postings. BeGole pointed out that those who post on it hide behind anonymity.¹³⁰ BeGole said he read the Grievant's complaint to him where she denied responsibility for taking and posting the pictures.¹³¹ She claimed that the accusation "only creates hostility and resentment." He said that Safi said he saw her taking the photos. The Sheriff said that someone is lying, and he chose to investigate. He said he called the Prosecutor and she assigned Pendergraff to investigate.¹³² BeGole said he gave Pendergraff Special Deputy powers for purposes of the

¹²⁹ Employer Exhibits 48 and 53, T. 578. Furthermore, all LEIN inquiries are documented.

¹³⁰ BeGole also said that right after the July 26 Facebook posting went up there was a posting which said, "Are these the same pictures that Kathy McGuckin shared with me?" (T. 557-558) then that disappeared and a short time later someone else was credited for the photos.

¹³¹ Employer Exhibit 13. It states, "...At no time did I have time to take and post pictures..."

¹³² BeGole said Pendergraff was probably the most skilled investigator in the County who has done "tons and tons of investigations" and "you probably don't find anybody more methodical than this man" (T. 556).

investigation. The Sheriff said that he replied to the Grievant's email complaint¹³³ because he felt that he had to follow up on her request and the allegation of hostility worried him. He said he then got the email reply from her and some "red flags" went off when she said she was not filing a formal complaint and she said, "I was merely informing you of what I was told only to get ahead of the game."¹³⁴ He said he felt he had to get to the bottom of it.¹³⁵

The Sheriff further testified that on September 3, 2019, when the Grievant was interviewed by Pendergraff, she told him at the very end of the interview that her brother took the picture. That very night BeGole said he got a call from McGuckin's brother Tim, who told BeGole that he took the photo and that he (Tim) "wouldn't know Sam Safi if he bumped into him in a dark alley." BeGole said he told Tim, "let's just see where the investigation takes it."¹³⁶ When asked about the investigation's findings¹³⁷ he said he carefully reviewed them and then met with the Undersheriff and Pendergraff to discuss the findings. BeGole said he learned that when Tim was set to interview with Pendergraff and realized that lying could affect his own position, he tried to explain away why he said he took the photo.

BeGole said he wished he could believe the Grievant, but if he accepted her assertions, then all these other people must be viewed as lying. This would include Safi, Atkins, Stafford and Hansen. Also, he said the Grievant did not work hard to prove her innocence; she did not turn over her phone, she did not agree to a polygraph. Moreover, he said that he was hoping that at some point she would just sit down and talk to him; he said he was very disappointed that she did not explain anything at her Predetermination Hearing and just said "a belligerent F-ing something as she left."¹³⁸ The Sheriff further stated that he found Stafford to be truthful as he was clear and concise with the Undersheriff and with Pendergraff. Finally, BeGole said the Grievant told MSP Nelson that Safi was policing the crash, gathering names, gathering participants' information and running names through LEIN when she knew that was not true and she even compared BeGole to the Oakley Police Chief who was charged criminally. The Sheriff said he did not want to fire the Grievant, but she pushed him into a corner "by not being truthful or forthcoming."¹³⁹

In its brief, the Employer asserted that the "overwhelming documentary evidence and testimony presented established not only had McGuckin taken the photographs at the accident scene that were used to publicly demean... the Sheriff's Office and Sam Safi personally, but that she was willing to lie about it during the investigation of her own complaint." The County argued that the Grievant acted in intentional manner to discredit the Sheriff's Office and that she had a "vendetta" against Safi because she felt that Safi received certain perks that Corrections were not privy to.

The County maintained that its actions were consistent with the Management Rights Clause and with the Seven Tests of Just Cause set forth in *Enterprise Wire*, 46 LA 359, 362-65 (Daugherty, 1966). The Employer asserted that the Grievant can no longer be trusted in her capacity as a Corrections Sergeant.

¹³³ Employer Exhibit 14.

¹³⁴ Employer Exhibit 15.

¹³⁵ T. 562.

¹³⁶ T. 564.

¹³⁷ Employer Exhibit 41.

¹³⁸ T. 572.

¹³⁹ T. 576.

The County argued that the Grievant lied about certain facts during the investigation of her complaint. Her behavior, contends the County, contributed toward undermining the public's confidence of the Sheriff and served to undermine the Department as a whole. The County stressed that Mr. Pendergraft engaged in a fair and comprehensive investigation and that the Grievant's misconduct was sufficiently proven. Moreover, the County asserted that it sufficiently proved that it had just cause to terminate the Grievant's employment since she committed the charged offenses, and that termination was the appropriate penalty. Finally, the County urged the Arbitrator not to modify the Employer's choice of penalty.¹⁴⁰

THE UNION'S POSITION

The POLC asserted that the Employer did not meet its burden of proving that it had just cause to discharge the Grievant. The Union called the Grievant and Union Representative Chris Watts to testify on its behalf.

Kathleen McGuckin, the Grievant, testified she has not been employed since her termination.¹⁴¹ She said she believed she was hired by the County in 2013 as a Corrections Deputy and in 2017 she was promoted to Corrections Sergeant. She said she was assigned to the night shift and also trained new employees. She said that her shift ate meals with the troopers maybe a few times a week. She said they spoke about the Repeater Facebook page and would talk about what was posted. She said it included "negative stuff" about the Department, the Sheriff and Safi. McGuckin said she never monitored the Page, but a friend would call her and then she would look at it. She said the Sheriff commented to some negative posts, but she did not think it was necessary as it was "embarrassing" and "the more you feed these people the worse it gets." The Grievant said maybe if he stopped, they would stop.¹⁴² She admitted to calling the Sheriff "an idiot," in a conversation with troopers and deputies, for following social media.¹⁴³ The Grievant also said she spoke to Nelson and Stafford about Safi. She said her brothers are not involved in politics.

The Grievant said that she did not work on July 18, 2019. She said she drove to the Chemical Bank by Kroger to give her brother Tim some money. She said her bank receipt shows that she withdrew the money from the ATM (which was on the west side of the building) at 3:35 p.m. She said she met Tim in the parking lot behind the bank (between the Kroger gas station and the grocery store). That day, she testified, she was on the phone with Sgt. Hunt for 53-63 minutes. She said that when she left, she subconsciously drove to the front of the bank (taking a right to exit in front of the gas station)¹⁴⁴ and commented to Hunt on the phone that there was an accident, which she said she did not see until she was exiting. McGuckin said she saw Safi and he waved to her, and she waved back. She said she did not see other responders there, but she saw Safi standing in the road (but did not see him directing traffic) and saw a lady in the middle of the road. The Grievant said she did not take photos of the accident scene or of any of the responding personnel. McGuckin

¹⁴⁰ Citing *Stockham Pipe Fittings*, 1 LA 160, 162 (McCoy, 1945).

¹⁴¹ When asked by the Arbitrator, the Grievant said she had not received compensation since her discharge, except for "a little bit of unemployment" (T. 683).

¹⁴² T. 609-610.

¹⁴³ She said she believed that Stafford was there, as well as Troopers Nelson and Travers.

¹⁴⁴ T. 620.

said she did not see a tow truck there. She said after the photos were posted on Facebook, a friend called her and said McGuckin's name was under a photo, but when she looked at the page, her name was not there. She said Sgt. Cross sent her a screenshot of the Facebook posting that had her name under the photo and someone named Tiffany Brower made the comment on it.¹⁴⁵ She said she never told Deputy Stafford that she took photos of the scene,¹⁴⁶ although he did call her the day after the accident and she said something to the effect of "I saw your buddy" referring to Safi. The Grievant stated, "Stafford is not a fan of Safi either."¹⁴⁷ McGuckin said she sent the email to the Sheriff and her intention was to let him know what was going on since he followed social media. She said she did not want her name thrown out in "unfounded accusations." After she received the Sheriff's email, she wrote back to say she was not filing a formal complaint.

The Grievant said that prior to her interview with Pendergraff she spoke to her brother Tim, who used to be a Union Representative. She said that she was being accused of taking photos and posting them. She said he said to her, "Are you f—ing kidding me? I took the pictures."¹⁴⁸ She said she did not ask him any follow up questions as she had to go to the interview. She said she did not tell him "it wasn't going to fly." In the interview, she said she told Pendergraff that she did not take the pictures. She said that although Pendergraff asked for her phone, it was for an undetermined amount of time, and she could not be without her phone.¹⁴⁹ She said she offered it to him to look at multiple times across the table and he would not take it. She said that towards the end of the interview, she told Pendergraff that her brother took the photos.¹⁵⁰

In her second interview with Pendergraff, she said he asked for her phone again, but she did not give it to him because of privacy concerns. She said he mentioned a polygraph, but she did not agree to it. She said after the second interview she misplaced her phone.¹⁵¹

The Grievant said that since her discharge she filed a lawsuit against the County,¹⁵² and as part of that suit her attorneys in that matter downloaded information off her phone regarding activity that she had with Facebook and all the websites she visited within a certain time frame.¹⁵³

With regard to the allegation that Stafford said the Grievant wanted him to ask the advice of Hansen about the photos, the Grievant testified that "it would never happen in a million years. I

¹⁴⁵ The Grievant said she was not personally familiar with Tiffany Brower. She said she did not know who she was "at the time" (T. 645). McGuckin said the Brower post said, "photo courtesy of Kathy McGuckin who also works at the Sheriff's Department." The Grievant mentioned an alleged previous connection between Brower and a person who worked for All-Star Towing (T. 646). In addition, the screenshot was not submitted into the record.

¹⁴⁶ T. 628.

¹⁴⁷ T. 628.

¹⁴⁸ T. 632. She insisted he did not say, "*Just tell them* I took the pictures."

¹⁴⁹ T. 633.

¹⁵⁰ She said at first, she did not want to drag Tim into it, but that she discussed it with Mr. Watts when they briefly left the room (T. 635).

¹⁵¹ T. 637-38. It was apparently left in her garage by her daughter; the Grievant said she ended up getting a new phone.

¹⁵² She said it had to do with her termination letter being allegedly in violation of the Whistleblowers Act. (T. 643).

¹⁵³ The time frames were July 15-August 2 and July 18-August 1, 2019. T. 641 (Union Ex. 1). In cross examination, she clarified that this activity could be tracked whenever she logged into Facebook from any device. (T. 649). The Grievant admitted to looking at the Facebook page on the work computer with the troopers, on her friend's Facebook feed (T. 650).

would never ask Sergeant Hansen for advice about anything.”¹⁵⁴ Also, she said she did not remember when her brother Tim told her he did not take the photos, but she said she hung up the phone on him.¹⁵⁵

Moreover, in cross examination, the Grievant explained that other Sheriff’s Department employees had concerns about Safi accessing LEIN information on computers that were already logged in on at the jail. Also, she explained that Trooper Nelson’s understanding of the Grievant telling him that Safi was collecting information and running LEIN, was from reading the Facebook post that discussed this. In addition, she said she could no longer work with someone who was making false allegations against her, so Stafford was moved.¹⁵⁶ Moreover, the Grievant said she did not trust Pendergraff and that was another reason she did not give him her phone.¹⁵⁷

Chris Watts, the Business Agent for the POLC, also testified on behalf of the Union. He confirmed that before she went into her interview, the Grievant told him about her brother taking the photos, and that near the end of the interview, Watts said he advised her to reveal this information. Mr. Watts also corroborated Ms. McGuckin’s testimony about declining to turn over her cell phone to Pendergraff and that the Union always advises its members to decline to take polygraph tests.

In its brief, the Union argued that since the Employer has accused the Grievant of dishonesty, the Employer should be held to at least a clear and convincing quantum of proving that the Grievant is guilty of the charges and that her disciplinary penalty was appropriate. The POLC urged that the Arbitrator draw an adverse inference since the County failed to produce Mr. Atkins and Detective Lieutenant Hansen—two of the Grievant’s accusers, to testify at the hearing.

Moreover, the Union asserted that the Employer is tasked with proving that the Grievant took photos of the accident scene, either posted or caused to have posted those photos on Facebook, and then lied about her involvement during the course of the investigation. The POLC maintained that the three main accusers in the matter: Safi, Atkins and Stafford all had motives to not be entirely forthcoming.¹⁵⁸ In addition, the Union contends that the County’s version of the Grievant’s involvement is not plausible including the fact that she knew Safi saw her and that she purportedly only told Stafford that she took the photo(s). The Union went on to question the credibility and/or the motives of other members of the Department.

The POLC argued that the Grievant’s story “has remained constant.” She has denied any admissions to Stafford and has denied taking or posting the photos. In its brief, the Union speculates as to who might have taken/posted the photos. Moreover, the Union asserts that Pendergraff could not get past the fact that the Grievant was near the scene of the accident and that he “improperly ignored exonerating facts in reaching his conclusion.” The POLC asserted that the

¹⁵⁴ T. 644.

¹⁵⁵ She said he never outright told her to tell anyone that he took the photos. (T. 645).

¹⁵⁶ T. 666.

¹⁵⁷ T. 668. Although, she did say that she relinquished her phone to her own attorneys (in her own lawsuit) to allow them to have access to certain contents of her phone (T. 639-640).

¹⁵⁸ Safi knowing that McGuckin was critical of his role in the Department, Atkins being associated with a towing company that purportedly has a relationship with BeGole, and Stafford having a purported reputation for dishonesty and an alleged strong desire to be promoted at any cost.

investigation was “results-driven” and “was geared, from its inception, with corroborating the Sheriff’s story.”

In addition to not proving that the Grievant took or posted the photos, the Union maintained that the County also did not prove that the Grievant was dishonest during the investigation. With regard to the Employer’s assertion that McGuckin violated the General Orders concerning the statements she made to MSP Troopers regarding Safi’s role in the Department, the POLC argues that such rules are unclear, and that the penalty was unduly harsh under the circumstances.

The Union stressed that the County did not show that it clearly communicated and consistently enforced its rules regarding speaking to people not in the Department about internal Departmental issues. Moreover, the POLC argues that the Employer failed to prove that the Grievant knowingly made untruthful statements to the Troopers. Even if she knew the statements about Safi were untrue, the Union argued that this would not have warranted the severe penalty of discharge.

DISCUSSION & FINDINGS

The commission of the Arbitrator is to determine if the Employer violated the CBA when it discharged the Grievant. The CBA requires just cause for discipline or discharge under Article 12, Section 1. Section 3 of the Management Rights provision in the CBA gives the Sheriff the right to make reasonable rules and regulations¹⁵⁹ and Section 1 states in pertinent part:¹⁶⁰

Except as otherwise provided in this Agreement, the Employer retains all rights, function, powers and authority...which the Employer has not specifically abridged...

Section 1 then goes on to state, “The Sheriff reserves the right to discipline and discharge in conformance with the terms of this contract.” The applicable terms of the contract are later set forth in Article 12, Section 1, which state in part, “The Employer shall not discipline or discharge an employee who has successfully completed probation except for just cause.” Thus, the just cause provision limits the Employer’s right to discipline.

As the undersigned has often stated, there are two main elements to proving just cause.¹⁶¹ First, the Employer must prove that the Grievant committed the offenses with which she was charged. Second, the Employer must show that it issued an appropriate penalty.

In the instant case, it is undisputed that someone took photos of Mr. Safi at the July 18, 2019 accident scene and someone posted them along with text on the Shiawassee County Neighborhood Watch Facebook page. The text included many details about Safi that would likely only be known by someone inside the Sheriff’s Department. These include his date of hire, his background, whether he was issued Departmental weapons, his training, and his alleged access to the LEIN system.

¹⁵⁹ Article 2, Section 3 (Joint Exhibit 1).

¹⁶⁰ Article 2, Section 1 (Joint Exhibit 1).

¹⁶¹ See e.g., *Bosal Industries*, 124 LA 165, 168 (Brodsky, 2007); *Lloyd/Flanders Industries, Inc.*, 131 LA 489, 494 (Brodsky, 2012). Many other arbitrators have adopted this analysis. See e.g., *Wackenhut Corp.*, 124 LA 1257 (Kenis, 2007); *Regal-Beloit/Marathon Electric*, 133 LA 1324, 1329 (Hornberger, 2014); *Marine Corp. Air Station*, 82 LA 28, 30 (Nolan, 1983); *Berrien County*, 126 LA 938, 943 (Van Dagens, 2009).

After the subject Facebook posting on July 26, 2019, about a week after the M-21 accident, certain evidence surfaced which caused the Sheriff and Undersheriff to decide to look more closely into the matter. Mark Pendergraff of the Prosecutor's Office was enlisted to conduct an independent investigation after the Grievant sent the Sheriff a memo a few days after the Facebook posting alleging that "someone is accusing [her] of taking pictures of Sam Safi while working an accident scene." She continued, "at no time did I have time to take and post pictures." She stated, "receiving a call stating someone is accusing me (on this page) of taking photographs just because I was there is disturbing and a direct attack on my character." Finally, she noted, "I am respectfully requesting for someone to ask Sam Safi or anyone making accusatory remarks to refrain from making unfounded and non-truthful accusations against me. This behavior only creates hostility and resentment which our department does not need..." In his reply to her on July 31, the Sheriff characterized her memo to be a "complaint" which merited investigation. On August 4, the Grievant wrote back to the Sheriff stating that hers was not a formal complaint and if the allegations were kept up, they could cause a hostile work environment. Nonetheless, the wheels of the investigation continued to turn.

After an extensive investigation by Mr. Pendergraff and his resultant recommendations, the Grievant received eight (8) findings and four (4) possible Rules and Regulation/Policy violations which resulted in her suspension pending investigation; the County then decided to terminate her employment after sustaining those charges.

The Employer asserts that it had sufficient just cause as a result of the investigation to discharge the Grievant. Between the voluminous documentation from the interviews conducted by Mr. Pendergraff and the testimony of the witnesses, certain credibility findings can be considered in determining if appropriate weight was given to the versions noted by those individuals. It is the province of the arbitrator to determine such credibility findings. One well-respected arbitration treatise explains this responsibility:¹⁶²

...[T]he duty of the arbitrator is simply to determine the truth respecting material matters in controversy, as the arbitrator believes it to be, based on full and fair consideration of the entire evidence and after according each witness and each piece of documentary evidence the weight, if any, to which the arbitrator honestly believes it to be entitled.

The Union in the instant case argued that the motivation of those people who were interviewed and/or who testified should be considered in evaluating credibility and the Arbitrator does not disagree with this general concept.

First, one must consider any relationships between the interviewees/witnesses and the Grievant or each other. The Grievant's brother Tim obviously has ties to Ms. McGuckin.¹⁶³ She is a close friend of Sgt. Hunt, with whom she was on the phone for over an hour at the time the M-21 accident. Both men from All-Star Towing said they were familiar with the Grievant's family, and

¹⁶² Elkouri & Elkouri, *How Arbitration Works*, 8th ed. (Bloomberg BNA Books, 2016) at 8-93 citing *Andrew Williams Meat Co.*, 8 LA 518, 519 (Cheney, 1947).

¹⁶³ As well as her other brother, Dennis (who apparently spoke to Gokee about the existence of dash cams).

they worked on the McGuckins' cars.¹⁶⁴ Other interviewees/witnesses are purportedly good friends with one another. These include Deputy James Stafford and Lt. Hansen.

The Grievant and her family appear to have many friends both in the Sheriff's Department and in the community. Sgt. Hunt, who did not give much information in his interview is obviously close to the Grievant, Staff Sergeant Colbry revealed that he is friends with the Grievant and her family, and Joe Spencer said he was a friend and neighbor of the Grievant. Neither Colbry nor Spencer revealed anything of note concerning the investigation.

Relationships must be considered in deciding how much weight to give certain explanations by these individuals. Sometimes it is simply taking what they said with a grain of salt, as relationships can color how one person views another, other times it might mean giving little weight to their version of the events. Obviously, many of the interviewees were corrections officers who worked together and had a good working relationship, but not necessarily a personal relationship. Some of the individuals had a common cause with other individuals—in this case, there were several people who felt a similar disdain for Mr. Safi, or at least his role in the Department, whether it was reasonable or not.

Other considerations play a role in evaluating credibility and what weight should be accorded any particular person's explanation. For example, certain witnesses interviewed could offer nothing direct or relevant to the investigation.¹⁶⁵ Some of the significant factors in assessing credibility were set forth by Arbitrator Coyle in *Safeway Stores*.¹⁶⁶ These include the relative strength of recollections, consistency given at one point in testimony compared to another time, consistency with testimony given in other forums, evident bias or motivation to misrepresent known facts, refusals to respond without acceptable reasons or evident evasiveness in responses given, the reasonableness of testimony considered in its entirety, and any other factors which, in the opinion of the arbitrator tend to strengthen or weaken the credibility or reliability of testimony. The undersigned therefore considers such factors when evaluating the credibility of the interviewees and the witnesses at the arbitration hearing.

In the instant case, other factors also merit consideration when evaluating a person's assertions. For example, the Arbitrator decides how much weight to assign to versions attributable to individuals who were interviewed, is whether they gave information without the Grievant mentioning her purported non-involvement to them shortly before their interview. It is clear from the record that the Grievant, at least in passing, told Shipman, Yerrick, Shelly, Hall, Lang and Richardson before their respective interviews, that she was being accused, but that she did not take the subject photos. Whether this influenced each of them consciously or subconsciously in their answers is something to consider. She also told the troopers that there was a possible leak at the County and some people think that she was behind it, but she adamantly denied to them leaking such information. It also appeared that, for those members of the Department who may not have

¹⁶⁴ The Union tried to infer that because the County allegedly liked to use All-Star when it should have been rotating which towing company it used, then Mr. Atkins had motivation to lie about seeing the Grievant holding her phone up at the scene and pointing it at Safi. The Grievant asserted other reasons to discount Atkins' corroboration of seeing the Grievant with her phone up at the scene. These will be addressed later.

¹⁶⁵ These include Cindy Livingston, Stacie Jolley and Joe Williams.

¹⁶⁶ 96 LA 304, 310 (Coyle, 1990)

concluded that Stafford was anxious to be promoted to sergeant, the Grievant planted that seed into their thoughts or at least reminded them of his purported motives. She told Lauren Shelly that Stafford wants McGuckin's job, and that Pendergraft will be interviewing Shelly.¹⁶⁷ Hall said that the Grievant told him that Stafford wants McGuckin's job and will throw everyone under the bus to get it.¹⁶⁸

It is notable that after the Grievant told Pendergraft that Stafford had a reputation for being untruthful, the investigator carefully questioned those he interviewed in order to also look into this allegation.¹⁶⁹ Some of the interviewees then recalled certain instances when Stafford's veracity was called into question.¹⁷⁰

Hall and Richardson, the two deputies who went to Isabella County for another matter, gave specific examples of Stafford's reputation for embellishment, which can be seen as a counterpoint to Hansen's characterization of Stafford as strait-laced and trustworthy.¹⁷¹ It is clear that the Grievant talked to Stafford the day after the accident; she testified that she told Stafford that she saw his "buddy" (Safi).¹⁷² The Grievant staunchly denied that she told Stafford to ask Hansen for his input.

Clearly though, it is credible to think that Stafford told Hansen that the Grievant told him this and that she asked Stafford to talk to Hansen, because Hansen's interview explanation about this was credible. The question is whether Stafford fabricated this elaboration, or whether there was any basis for his story?¹⁷³ It appears that before Stafford had his interview with Brancheau, he and the Grievant were at least work friends; they worked out together sometimes at Planet Fitness,¹⁷⁴ they ate dinner with the troopers at the Jail, played bingo at the casino,¹⁷⁵ and, according to the Grievant, he called her a lot.¹⁷⁶ After his interview with Brancheau, the Grievant had him reassigned, because she said he could no longer be trusted.¹⁷⁷

On the one hand, the Grievant was calculated in lining up her ducks in a row. She tried to "head things off at the pass." Her memo to the Sheriff and her mentioning of "trying to stay ahead of the game" backfired, as she was taken aback when the Sheriff viewed it as a complaint that warranted

¹⁶⁷ Employer Exhibit 35 and Employer Exhibit 41, page 30.

¹⁶⁸ Employer Exhibit 36, page 2.

¹⁶⁹ And he even revisited those he previously interviewed to follow up about Stafford's truthfulness. Moreover, he followed up by interviewing those with whom the Grievant recommended he talk to.

¹⁷⁰ These include Wells, Yerrick, Hall, and Richardson.

¹⁷¹ While Hansen's deposition in McGuckin's other case was admitted into the record, the Arbitrator cannot help but wonder why Hansen could not have been available to testify on the second day of hearing, rather than be scheduled for the third day of hearing which conflicted with scheduled annual training.

¹⁷² T. 628

¹⁷³ One cannot help but wonder if Stafford, Hansen, and Safi who were all keeping quiet about the allegation of the Grievant taking a photo or photos, had not kept quiet, perhaps the posting may not have occurred (or perhaps it would have occurred prior to July 26) and this all might have played out differently.

¹⁷⁴ Employer Exhibit 52, page 38; T.407.

¹⁷⁵ T. 407.

¹⁷⁶ T. 628-629.

¹⁷⁷ Interestingly, the undisputed bulk of the examples where Stafford was purportedly untruthful were well before Stafford was interviewed by Brancheau. The Grievant knew of these examples yet she could still trust him enough to supervise him in Corrections until the alleged untruthfulness involved her.

investigation.¹⁷⁸ On the other hand, her testimony revealed that her memos were referring to her trying to reach the Sheriff to counter him possibly having seen her photo credit under a photo of Safi on the Facebook page. The best defense is a good offense; she was accusing Safi of wrongfully blaming her for the taking the photos. When questioned about why she blamed Safi, she stated that he saw her at the scene and waved to her, and he knew that she had previously complained about his role in the Department.

Moreover, when viewing the credibility of the Grievant, some inconsistencies are difficult to reconcile. The Grievant claimed she did not remember which of her cars she was driving, yet she remembered that she had to leave the Kroger lot because there was a black truck behind her.¹⁷⁹ She noted that she and her brother Tim drive the same type of black vehicle, but why would Safi mistake Tim's vehicle for hers, as she suggested, when Safi claimed that he saw her in the driver's seat.¹⁸⁰ Also, why would the Grievant remember certain details so clearly, yet she stated in one of her interviews that she did not know that Safi had the old K-9 car.¹⁸¹ About everyone else knew that vehicle, and maybe the Grievant was just trying to distance herself from the written posting on the Repeater page.¹⁸²

The whole situation with the Grievant's brother Tim is also difficult to reconcile. Before her interview with Pendergraff on September 3, she spoke to Tim on the phone. He explained how the interview would go¹⁸³ and, according to Tim, she was worried that she would not be believed, so Tim told her, "Just tell them I took the picture..."¹⁸⁴ He claimed she had no reason not to believe that he took the picture. In her testimony she alleged that she had no time to ask him questions about this, as she had to appear for her interview.¹⁸⁵ The Grievant believably said she did not want to bring her brother into this, so she did not mention it earlier in the interview.¹⁸⁶ Tim came clean the following day when he met with Pendergraff for his interview. Then he admitted:

¹⁷⁸ The record reflects that the Grievant had filed at least one other complaint with the Department (According to Hansen, she filed a complaint against him saying he had "an attitude against booking officers" Employer Exhibit 52, page 39) . It was not unreasonable for the Sheriff to consider this memo to be a complaint, especially given the "possible hostile work environment" language used in it.

¹⁷⁹ Employer 24, page 10.

¹⁸⁰ Plus, he did not know Tim McGuckin.

¹⁸¹ Employer Exhibit 24, pages 23-24. At one point she said she had no idea which car is the old K-9 car—"we don't drive the cars." Perhaps this was a dig because Corrections, unlike Safi, isn't permitted to drive those vehicles. It should be noted that in her July 29th email to the Sheriff (Employer Exhibit 13) she stated that she saw the K-9 vehicle at the accident scene. If no other responders were there at the time that she saw Safi near a lady in the middle of the road (as she maintained), wouldn't she know that that is what he was driving at the time?

¹⁸² It read, "July 18th, Sam Safi arrived at the scene of an accident in front of the Kroger gas station. He was driving the old K9 SUV that has the vehicle # 33."

¹⁸³ The Grievant testified that she called him because he was smart, and he told her what to expect; she mentioned that he was a union representative. Later in her testimony, she revealed that she was also a Union representative. T. 656.

¹⁸⁴ The Grievant's testimony was contrary to her brother's written statement. She was adamant that he said, "I took the picture" not "Just tell them I took the picture." Nonetheless, Tim repeated the "just tell them..." recollection several times during his interviews (e.g., Employer Exhibit 23, pages 7 and 29).

¹⁸⁵ Yet in the second interview of Tim, Pendergraff noted that the Grievant called Tim in the morning, but her interview with Pendergraff was not until that afternoon (Employer Exhibit 23).

¹⁸⁶ Although a good reason not to drag him into this, would be if he was not being truthful when he said it was him. In Tim's second interview, he acknowledged that his sister was probably trying to protect him (Employer Exhibit 23).

So, I was there to pick up the money. I didn't take any pictures. You know, I, told her to say that to, to, to help ease her mind, because she told me she never took the pictures. She had no involvement with it...

Perhaps any good brother is protective of his sister and Tim was no exception. However, Tim explained during his interview that,¹⁸⁷

You know. I don't know Sam. I don't know who this guy is or what his role is or anything like that. I've never met him. I don't believe I've ever met him...

When Tim McGuckin phoned Sheriff BeGole on the night of September 3, after his sister had been interviewed by Pendergraft, Tim told BeGole that he took the photo and that he (Tim) wouldn't know Sam Safi if he bumped into him in a dark alley." This did not make sense to the Sheriff, but he told Tim, "let's just see where the investigation takes it."¹⁸⁸

Thus, for his sister to have genuinely believed that her brother Tim took the photos when he did not even know the man, is surely a stretch. She certainly did not appear to be a gullible person.¹⁸⁹

Her other brother Dennis was mentioned during the interview of Richard Gokee, the owner of All-Star Towing. Although Mr. Gokee appeared to have at least an odd sense of humor, he asserted that Dennis called him to find out whether a posting on the Repeater Facebook Page was true, that the All-Star trucks had dash cams.¹⁹⁰ Gokee asserted that he was just "feeding the fire" as there were no dash cams. Dennis purportedly told Gokee "that somebody had taken pictures and was accusing his sister of taking the pictures" and Gokee said that Dennis wanted to know who took the photos. Here, a different protective brother was trying to find out if the alleged dash cam recorded who took the photos. This would be either to find out who the true culprit was, or to simply find out if there was recorded evidence of his sister taking them.

If motivation for taking the photos is to be examined, the record indicates that there were several members of the Department who disliked Mr. Safi, or at least were not happy with his role in the Department. The Grievant was definitely one of them.¹⁹¹ Tellingly, when she spoke of talking to Stafford the day after the accident, she stated, " I think I said something to the effect that I saw your buddy. We joked about him being there. Stafford was not a fan of Safi either..."¹⁹² Hansen mentioned in the deposition that was admitted into the record for this case, that he and McGuckin shared a lot of the same views regarding what Safi was doing and how he was portraying himself."¹⁹³

¹⁸⁷ Employer Exhibit 23.

¹⁸⁸ T. 564.

¹⁸⁹ Moreover, as discussed *infra*, if she took the photo(s) then she knew that he did not take them.

¹⁹⁰ Although the date mentioned by Gokee for the call was clearly a month off, since it could not have been before the July 26 Facebook posting about Safi.

¹⁹¹ In her testimony, the Grievant was quick to point out the names of many of her colleagues that "had an issue with Sam Safi in certain aspects of his job." Specifically, she mentioned Shipman, Spencer, Stafford, Shelly and Hansen, as well as herself (T. 660). However, in her interview, the Grievant contended that she had no issues with Safi; that he had always been very nice to her (Employer Exhibit 24, p. 49).

¹⁹² T. 628.

¹⁹³ Employer Exhibit 52, page 11.

The undersigned found Mr. Safi's testimony to be credible. For one thing, it should be noted that he reported the incident to Lt. Carson and to the Sheriff right after it happened. The fact that he did not have time to fabricate a story serves to make the assertions more credible.¹⁹⁴ His written statement that was drafted well before the July 26 Facebook posting also goes to credibility. Perhaps Mr. Safi really wishes to be a police officer, but this is no reason to disregard his sense of responsibility and apparent dedication to the Sheriff's Department. Stopping to help at the scene of an accident was a commendable action.¹⁹⁵

Sheriff BeGole's testimony was credible and heartfelt. He went out of his way to have someone outside of the Department conduct the investigation. He was forthright about his friendship with Safi, yet he did not take Safi's allegations about the July 18, 2019 accident and its aftermath at face value, instead opting for independent investigation after the Facebook posting and the Grievant's July 29, 2019 memo to him.

Perhaps there is some truth to Corrections employees being envious that Safi is allowed to do certain things which they are not. He has a permit to carry his own gun, while Corrections people cannot take their Department issued firearms home; he wore a class A uniform to a judge's son's funeral when Corrections employees wear class B uniforms; he occasionally drives a Department vehicle home so he can work on it there, while Corrections employees cannot take Department vehicles home.¹⁹⁶ Perhaps he is allowed to do some things that are perceived to be benefits, but the record indicates that he is a hard worker and likely would not be permitted these so-called advantages if he were not.

Considering how much weight to give to the aforementioned written statements, the interviews, and factoring in the subsequent testimony of those who served as witnesses,¹⁹⁷ we can now go back to examine the charges that were levied in the findings that were first provided to the Grievant in her Predetermination Hearing Notice which were later substantiated leading to her termination.

- (1) On July 29, 2019 you emailed Sheriff BeGole stating that you denied taking any photographs of Special Deputy Sam Safi or any accident scene on July 18, 2019, and that you were being accused of taking pictures of Special Deputy Sam Safi responding at the accident scene on July 18, 2019. You specifically requested that Special Deputy Sam Safi or anyone making accusatory remarks be directed to refrain from making unfounded and non-truthful accusations against you.

This concerns the first email from McGuckin to BeGole about the incident. It is simply a fact. If the denial is subsequently determined to be untrue, then there are consequences.

¹⁹⁴ Like the hearsay exceptions, present sense impression and excited utterance, there is reason to give such a statement made immediately after the event greater weight. *See also, Tri-State Generation and Transmission*, 135 LA 1460, 1468 (DiFalco, 2015).

¹⁹⁵ As Lt. Carson and Deputy Worrall apparently recognized (T. 360-361).

¹⁹⁶ But Sheriff BeGole testified that he has been expanding the roles of Correction Officers more than his predecessor did.

¹⁹⁷ A more detailed discussion concerning the credibility of Stafford and the Grievant will be addressed *infra*.

- (2) On August 6, 2019, you wrote Sheriff BeGole stating that “These allegations are absolutely untrue and could potentially, if kept up, cause a harmful work environment.” The allegations you referred to were those set out in your email on July 29, 2019, where you complained you were being accused of taking pictures of Special Deputy Sam Safi while he responded to a personal injury auto accident scene on July 18, 2019.

Again, this is factual, taken from the reply email sent from the Grievant to BeGole. The Grievant again denied taking the photos.

- (3) You stated unequivocally during your first interview with Special Investigator Mark Pendergraff that you did not take any photographs of Special Deputy Sam Safi at the accident scene on M-21 on July 18, 2019, or post any photos on social media.

Here, it discusses the Grievant’s denial at her first interview with Pendergraff, not only of taking the photos, but also of posting them. This statement simply reflects what the Grievant told the Investigator.

- (4) Investigation of your complaint revealed that you were observed by multiple witnesses to be taking photographs of Special Deputy Safi while he was directing traffic at the accident scene on July 18, 2019 on M-21 near Krogers.

Finding (4) simply recounts what the investigation revealed—that witnesses (namely Safi and Atkins) saw her taking photos at the scene.¹⁹⁸ If the Grievant is to be believed, these two observations are either untrue or mistaken. If either of these witnesses are credible, then the Grievant improperly denied this.

- (5) On or about July 19, 2019, you told Corrections Deputy James Stafford that you had observed Special Deputy Sam Safi to be working at a car crash and that you had snapped a picture of it and that Officer Stafford should report the matter to Sgt. Hanson [sic] as a non-sworn Officer was working an accident scene. You further stated to Deputy Stafford that it was “bullshit” that Special Deputy Safi was at the accident scene and that “he is not a cop.”

This finding is based on Stafford’s explanation in the investigation. The Grievant admitted to telling Stafford that Safi was working the car crash. She adamantly denied telling Stafford that she snapped a picture or that Stafford should report the matter to Hansen (actually she denied that she took any photos and denied that she requested that he ask Hansen for advice concerning what to do with the photo(s)). To believe all of this is to believe Stafford’s full recollection; to believe the Grievant is to disbelieve Stafford.

- (6) In order to investigate the Complaint you filed, as well as the Complaint filed by Special Deputy Sam Safi, an Independent Investigator, Mark Pendergraff, was engaged to perform

¹⁹⁸ Actually, Atkins described the Grievant holding her phone up and pointing it toward Safi.

an investigation on behalf of the Sheriff's Office. On September 3, 2019 and September 12, 2019 during your interviews by the Special Investigator, you were uncooperative and untruthful.

The first sentence of this finding is factual, assuming the Grievant and Safi's emails can be characterized as Complaints. The second sentence states that she was uncooperative and untruthful during her interviews could be referring to the fact that she failed to turn over her phone for analysis or that she failed to volunteer to take a polygraph. Investigator Pendergraff stated that the Grievant was guarded and evasive in her answers.¹⁹⁹ Again, if the Grievant took the photo(s) that were later posted on the Facebook Page, then she was untruthful. Even, at the point that she said her brother Tim took the photos, the question is whether she knew or should have known that he did not take them. If she took them, she knew he did not; when he admitted to Pendergraff and Brancheau that he did not take the photos, the Grievant did not go back and correct her previous statement that he did.²⁰⁰

The fact that the Grievant never turned over her phone (not just offering it to Pendergraff for a quick look during her first interview) for analysis merits a further examination. The Grievant stated that one reason she could not be without her phone was that it was her means of communication.²⁰¹ Interestingly, she later recalled that her grandson was using her phone to play games and he took it home with him, but her daughter later came and placed it in the Grievant's garage; the Grievant said she did not know it was there for some extended amount of time. McGuckin stated that she ended up replacing it with a new phone. This is a clear example of inconsistency in her rationale; she could be without her phone for certain reasons, but not for this investigation. The undersigned has no problem with the Grievant declining to take a polygraph and does not take this as proof of guilt.

- (7) You falsely told MSP Trooper Spencer Nelson while in Booking at the Shiawassee County Sheriff's Office Jail, that Special Deputy Sam Safi was policing the crash that took place on July 18, 2019 on M-21 and that Safi was (1) gathering names; (2) gathering participants and witnesses information; and (3) running names through LEIN even though Safi was not a certified Police Officer and not LEIN certified. You further told MSP Trooper Spencer Nelson that Sheriff BeGole was an "idiot," that he was running things wrong, and that he was going to get jammed up for it and that Sheriff BeGole is just like the "Oakley Police Chief."

¹⁹⁹ T. 145 and Employer Exhibit 24, page 19. It should be noted that at certain points when she gave evidence, the Grievant provided responses or statements that were not direct. Examples include, when she was asked if she recalled telling the troopers that she tried to take a photo but it didn't work she answered "Mmm, I don't think so" (Employer Exhibit 24, page 24) or when Pendergraff asked her what her impression was as to what Sam was doing at the accident scene, she replied, "I don't think I formed an impression" (Employer Exhibit 24, page 13). In her July 29 memo to the Sheriff she stated, "at no time did I have time to take and post pictures" and "I do not follow that Neighborhood page as I have a million other things to do other than be on Facebook" (Employer Exhibit 13). Evasiveness is a credibility factor to consider.

²⁰⁰ During Pendergraff's second interview with Tim McGuckin, Pendergraff told Tim:

...You know ah, another thing that kind of surprises me is that she never called me to say hey, I'm sorry ah, I didn't know my brother really didn't take the pictures. Anything along those lines. I, I didn't hear one word from her.

²⁰¹ The other reason that she stated was a concern for her privacy. T. 633, 637.

Trooper Nelson credibly explained the above situation in his interview. The Grievant had zero basis for making these statements, since simply seeing Safi at the crash scene and seeing him talking to a woman, does not mean that he was gathering names or information. The LEIN allegations led to a separate troublesome investigation in which the Department had to respond to an August 15, 2019 inquiry from the Acting Director of the Criminal Justice Information Center of the Michigan State Police about Mr. Safi allegedly having LEIN access without the required training or certification. Lt. Cory Carson was assigned to investigate this at Sheriff BeGole's request. He did, by talking to various I.T. people and others to determine if Mr. Safi accessed such information. It was found that he did not access it.²⁰² The report made by Lt. Carson not only named the individuals whom he contacted to investigate this claim, but he also mentions and attaches photos and comments from the subject Facebook page citing the harassment endured by Mr. Safi as a result. Finally, on September 20, 2019 (over a month after this LEIN inquiry began), the relevant MSP Director stated that she had evaluated all of the submitted information and determined the complaint to be unfounded and closed the matter.²⁰³ These LEIN allegations are a serious matter. In her testimony at the subject arbitration hearing, the Grievant asserted that the statements listed in #7 were a result of reading with the troopers what the Facebook page said, when it declared the above. This explanation might have been seriously considered had she made it earlier in the process.²⁰⁴ Now, years later when she had time to establish her defense, this explanation carries little, if any weight.

With regard to the last sentence of Finding #7, the Grievant candidly admitted to this. She said she called the Sheriff an "idiot" for following social media and did this in front of her subordinates and in front of MSP Troopers.²⁰⁵ She also said he was going to get "jammed up" and compared him to the Oakley Police Chief who was criminally prosecuted. This is extremely disrespectful, unprofessional and unbecoming. This type of behavior was consistent with her behavior in her interview, when at two different junctures in her interview she told Pendergraff (whom she knew to have powers bestowed upon him to act on behalf of the Sheriff) that if he believed something, "he must be out of [his] mind."²⁰⁶ Even her muttered comment as she left her Predetermination Hearing that it was "bullshit" was inappropriate and not fitting of someone of her stature.²⁰⁷ Her actions in Finding #7 were properly fully substantiated.

- (8) You have consistently complained and engaged multiple Corrections Deputies and MSP Troopers while on duty at the Shiawassee County Sheriff's Office about your complaints that Sheriff BeGole hired and specially deputized Sam Safi; the hours that Sam Safi works; the specific responsibilities the Sheriff has assigned to Sam Safi; that Safi is issued a Departmental weapon by Sheriff Begole that Special Deputy Safi failed his firearms class on multiple occasions; that Safi has not completed proper training to operate a police

²⁰² Mr. Safi was found to be "incapable of logging onto the message switch" and cannot power the car's computers which he sometimes drives.

²⁰³ The documents concerning these LEIN allegations were included in Employer Exhibit 48 and submitted separately as Employer Exhibit 53.

²⁰⁴ I.e., when she was given the opportunity to explain each of these findings at her Predetermination Hearing.

²⁰⁵ T. 609.

²⁰⁶ Employer Exhibit 24, pages 21 and 29. In her testimony, the Grievant even made some disparaging remarks about Investigator Pendergraff (T. 668,).

²⁰⁷ And later, during her testimony on the record, she flippantly stated that the Sheriff followed social media "worse than a schoolgirl sometimes." (T. 667)

vehicle; that Safi has not been trained in proper police interview techniques; that Safi has access to the LEIN system, which would be a felony if true; that Safi polices actively, including policing vehicle accidents; and that Safi is assigned a patrol vehicle which he is authorized to take home after work.

The record for this case corroborates the findings set forth in #8. The Grievant has, over time, consistently complained about Mr. Safi and his role in the Department. The record also shows that the Grievant has not been the only Departmental employee to do so.²⁰⁸ Apparently, the charge is implying that because the Grievant has done all this, she must bear the responsibility for the Facebook information that was posted.²⁰⁹ Although, because the nature of her complaints were mirrored in the Facebook posting about Safi, this conclusion while logical, is circumstantial at best. Assuming that the Department proved that the Grievant took the photos that were later published on the Repeater page, there is no definitive evidence that she herself published them, but if she took the photos and they were later published on Facebook she could possibly be seen as indirectly responsible for their posting.²¹⁰ As the Sheriff noted in his testimony, one of problems with Facebook is that people hide under the cloak of anonymity. As was pointed out during the record, many of the people who were credited with photos or with certain posted information used assumed names, so fingers could not be pointed at them.

It should be noted that the Grievant was also given a “Notice of Discipline” letter on October 21, 2019, after being given notice on October 17, 2019 of an October 21 Disciplinary hearing.²¹¹ Although these documents were placed into the record, there was really no discussion about them or the October 21 hearing during the course of the arbitration hearing or in the parties’ briefs.²¹² The October 21 disciplinary notice concluded that Department Order 101, Part 1, Part J (False Statements) and Part F (Conduct Unbecoming), as well as Department Order 101, Part 2, Part N (Confidential Information) and Part O, Public Appearances had all been violated. In addition, the Employer added in the Notice of Discipline that it determined that the Grievant had violated her Oath of Office to Shiawassee County Sheriff.²¹³

Interestingly, Union Exhibit 1 was submitted to show that the Grievant had supposedly not even gone on the Shiawassee County Neighborhood Watch Facebook Page or interacted with it. The problem with this evidence is that even if the Grievant was not signing in on her own Facebook account to access this site, it is clear that she viewed or possibly posted on it through other ways. The Grievant has many friends and colleagues who could sign in and she could contribute or simply view the page through them. The jail has computers that can be used, and another person can sign in. The record reflects that she read the posting in question and that she even checked to

²⁰⁸ For example, in his deposition, Hansen admitted to some of this behavior (Employer Exhibit 52).

²⁰⁹ Again, the Grievant had more than adequate opportunity to counter this and the rest of the findings in the course of her Predetermination Hearing.

²¹⁰ At one point in her interview when she asserted that her brother took the photo(s), she explained that he “sent them to whoever to see who the guy [Safi] was” (Employer Exhibit 24, page 47). If she thought this was so, why didn’t he send them to her for Safi’s identification?

²¹¹ Employer Exhibit 45. The only reference to this exhibit in the hearing was at T. 445 when the Arbitrator noted that certain exhibits were admitted into the record. Apparently, there were two references to the Grievant’s civil lawsuit where both the Sheriff and the Grievant mentioned something about her termination letter (T. 595, 643).

²¹² The eight (8) previous findings were elaborated on in the October 21 notice.

²¹³ Joint Exhibit 6.

see if her name was still credited under a photo. If Union Exhibit 1 is accurate, she oftentimes accessed the Facebook page through others' accounts.²¹⁴

As the Employer pointed out, to believe the Grievant's statements in her interview in tandem with her subsequent testimony is to discredit Safi, Atkins, Hansen and Stafford. Stafford and Hansen's statements and interviews along with Stafford's testimony at the hearing merit closer examination.

Upon reviewing the interviews of Stafford in tandem with his testimony, several points became clear to the Arbitrator. Stafford explained that he spoke to the Grievant on July 19, and she told him that she saw Safi at the scene of an accident; she believed a non-sworn officer was policing a car crash. Stafford claimed that the Grievant asked him to pass it by Hansen. Stafford said she also told him she took a photo or photos of it. In his interviews with Undersheriff Brancheau and with Investigator Pendergraff, Stafford was consistent in stating that it was that Safi was appearing to work the crash and not what to do with the photo(s) that he was supposed to mention to Hansen.²¹⁵ Stafford, however, admitted that even though the Grievant did not tell Stafford to mention the photo(s) to Hansen, he did anyway.

In Hansen's interview, he stated that Stafford told him that the Grievant took a photo of the scene and that she wanted Hansen's input about this. Hansen then told Stafford not to say anything to anyone about this, because Hansen did not want to get involved. After the photos were posted, Hansen reported his previous conversation with Stafford to the Undersheriff. Hansen then showed the Facebook posting to Stafford who denied ever previously seeing the photos.

Clearly the Grievant was unhappy with Safi's role in the Department; seeing him "taking over" at the accident scene added more reasons to resent his perceived authority. Despite the parade of people who testified about Stafford's examples of untruthfulness, Pendergraff concluded that Stafford was candid in his interviews. After careful review of the evidence, the Arbitrator believes that the Grievant told Stafford that she took a photo or photos of the scene.²¹⁶ The undersigned believes that she did this because she perceived that Safi was overstepping his authority, as, at the time, no one else from the Department was at the accident scene.²¹⁷ Thus, to support her allegation later, if necessary, she documented this by taking a photo or photos of Safi out in the road pointing and looking official, part of the police vehicle, and the woman in the road. The grievant's explanation of who was at the scene and who wasn't there at the time is consistent with the photos

²¹⁴ See *i.e.*, the Grievant's testimony regarding this T. 607-608, T. 626-627, 650; Employer Exhibit 24, pages 27 and 32.

²¹⁵ See *e.g.*, Employer Exhibit 16, page 2; T. 412, 426, 451.

²¹⁶ Even if the Grievant's allegation that she would never seek Hansen's advice on anything is persuasive, it is not unreasonable to believe that since Hansen and the Grievant both were of the mindset that Safi was allowed to do more than a non-sworn officer should, and because Hansen was a higher rank than Stafford, sharing that the Grievant saw Safi taking charge at a crash scene, and deciding what to do about this information internally is plausible. Alternatively, the Grievant could have not even asked for Hansen's input but because Stafford approached Hansen about the information, Hansen could have assumed that Stafford was seeking advice on behalf of McGuckin. Hansen even admitted during his interview that he thought it was odd that McGuckin would ask for his advice.

²¹⁷ The Arbitrator does not believe that the Grievant took the photo(s) for the purpose of ridiculing Safi publicly on the Facebook page, but merely as possible future internal departmental evidence that Safi was exuding excessive apparent authority. Moreover, even though she purportedly also told Stafford that others snapped photos of the scene as well, the Grievant never provided additional details in her interviews about how she allegedly knew this.

that were later posted on Facebook. Her initial “mistake” was confiding in Stafford, who felt the need to share the photo information with his friend Hansen. Like the game “telephone,” Hansen either remembered what Stafford told him differently than what was said, or Stafford told Hansen more than what he let on regarding what Hansen’s input was wanted about.

The Grievant’s subsequent actions support this explanation. First, she went to great lengths during the investigation to discredit Stafford since he was the source of telling others that the Grievant snapped a photo or photos of the scene. Second, the record reflects that the Grievant also was pervasive in her denial to other individuals who were going to be interviewed for the investigation, that she had taken the photos. These two reasons appear to indicate that the Grievant could have been trying to engage in damage control. Third, why did the Grievant move Stafford from his jail assignment after his interview with the Undersheriff? She alleged that she could not have someone she did not trust working for her at the jail. But why couldn’t she trust him? She alleged it was because he was fabricating stories in order to take her sergeant’s position. Perhaps, instead it was because he could not keep what she told him to himself.²¹⁸

With regard to Safi’s and Atkins’ versions of what they observed, the Grievant articulated a variety of reasons to discount Atkins’ recollection of the Grievant’s role.²¹⁹ The only reasons that carry any weight are her recollection of not seeing the All-Star tow truck there at the time,²²⁰ and the Union’s argument that the County could have put Atkins on the stand at the hearing but did not. Thus, Atkins’ explanation is not being considered at all by the Arbitrator.

This leaves Safi’s and the Grievant’s version of what occurred to be compared to assess credibility regarding the events at the accident scene.²²¹ Safi claimed he saw the Grievant stopped in the exit lane with her camera up taking photos of him at the scene and that this was before Carson arrived. Safi soon after reported this to Carson and to the Sheriff. The Grievant spoke to Stafford within a day of the incident and Stafford reported what he was told.²²²

Moreover, the Grievant was also quick to make disparaging and disrespectful remarks about the Sheriff²²³ and even about Investigator Pendergraft. If her testimony and interviews are deemed

²¹⁸ Also, had the Grievant turned over her cell phone for analysis when asked, she could have possibly exonerated herself if she truly did not take the photo(s).

²¹⁹ The Grievant alleged the following reasons that Atkins’ version was not to be believed: because he was friendly with Safi; because the Sheriff liked to use All-Star Towing; and because she asserted that there was some connection between Atkins and a Tennessee woman who purportedly had a connection to the Facebook Repeater page. The Grievant set forth these reasons on February 9, the third day of the hearing. In addition, Ms. McGuckin had alleged that Atkins and his tow truck were not even at the scene when she saw Safi and the woman in the street.

²²⁰ Moreover, Safi corroborated the Grievant’s claim that the tow trucks did not arrive until after Carson got to the scene, thus Atkins’ story about Safi nudging him and pointing to the Grievant with her camera up cannot be viewed as credible.

²²¹ The Grievant alleged that Safi claimed he saw her taking photos because she was at the scene and because he knew she had been unhappy with his role in the Department. However, the Grievant stated that when she saw Safi, he was in the road with a woman at the scene and the emergency lights of his vehicle were on. Safi and the woman in the road are the only persons that showed up in the posted photos from the July 18, 2019 accident (the story that accompanied the photos mention the emergency lights being on).

²²² Notably, Stafford volunteered to take a polygraph (T. 98).

²²³ Although she did acknowledge that he was the one gave her a job and promoted her to sergeant (Employer Exhibit 24, page 53).

wholly credible, then the Arbitrator has to believe that the Grievant is beyond reproach while a host of other witnesses are lacking in some respects.²²⁴ This conclusion is not only illogical and unreasonable, it is not supported by the record in this case.

Even before her Predetermination Hearing Notice, the Grievant could have informally approached the Sheriff or Undersheriff before setting forth her complaint in writing or discussed this with them even after her September 3rd interview with Pendergraff, in order to “clear the air.” She chose not to.²²⁵

The Grievant had a more than adequate opportunity to correct and clarify the Department’s eight findings at her predetermination hearing. She was given clear advance notice of the purpose of that Hearing. The eight findings analyzed above were presented to the Grievant before her Predetermination Hearing and she chose not to follow the specific instructions on her Notice for that hearing. Specifically, the Notice states, “The Predetermination Hearing has been scheduled *to provide you with an opportunity to respond to the following tentative findings.*” After the findings were set forth, the notice goes on to state:

You should be prepared to respond to each of the above findings with any and all information you wish to have considered prior to a final determination as to what discipline, if any, would be appropriate as to each finding. You have the right to the presence of a Union Steward during the course of the Predetermination Hearing. However you will be required to answer questions and speak for yourself as would be expected of an experienced Corrections Sergeant.

You should also be prepared to offer any and all mitigating circumstances regarding the above findings that you wish to have considered prior to a final determination of any discipline...

[emphasis in italics not part of the original].

The Grievant chose not to avail herself of providing additional or mitigating circumstances for the Department to consider. She only declared a general statement, that she had nothing to say except that the findings were false and not true.²²⁶ Had she explained her view of the circumstances and given some possibly mitigating circumstances at that time, perhaps the tentative findings would not have been substantiated and different discipline might have been issued. Instead of addressing her explanations during the Predetermination Hearing, she provided many logical explanations at her arbitration hearing about two years after the fact. The Grievant appears to be an intelligent person; here she had the advantage of a very extended period of time in which to close up some perceived holes in her rendition of what occurred.²²⁷

²²⁴ Believing the Grievant’s version, is even at odds with her brother Tim’s recollection of the events.

²²⁵ Had the Grievant taken the initiative to talk all of this over with Sheriff BeGole and even expressed some remorse for the way things played out, the Sheriff testified that the situation would not have come to this. She instead chose to deal with him at arm’s length through written statements and formal interviews conducted by others. Her proffered excuses during her arbitration hearing were too little, too late, and the undersigned regards these as unpersuasive.

²²⁶ Even this statement is incorrect, since at least Findings #1 - #3 simply recount undisputed facts from the investigation.

²²⁷ I.e., “had access to” vs. “accessed LEIN information” (T. 652-653); what Trooper Nelson testified that she said to the troopers about Safi and the accident, she now said was the result of Nelson reading off the internet (Facebook page) (T. 662-663).

The Shiawassee County Sheriff's Office Rules and Regulations that were cited were:

Department Order 101, Part 1, General Duties, Part J, False Statements
Department Order 101, Part 2, General Conduct, Part F, Conduct Unbecoming
Department Order 101, Part 2, General Conduct, Part N, Confidential Information
Department Order 101, part 2, General Conduct, Part O, Public Appearances

These Rules and Regulations are part of the record in Employer Exhibits 2-4 and the above cites can be found at Employer Exhibit 2, pages 101- 106, page 101-109, and pages 101-11. Employer Exhibit 3 sets forth the Complaint Procedure (Policy 103), and the Disciplinary Policy is set forth in Exhibit 4 (Policy 107). Moreover, it is clear that the Grievant had notice of the Rules, as she signed in receipt of them.²²⁸

The County stressed that General Duty 101, Part J prescribes that "Members shall not knowingly make any false statements or misrepresentations of the facts on any official matter." The Investigator concluded that the Grievant lacked honesty in her interviews and statements during the investigation of the complaint. Pages 43 through 45 of Employer Exhibit 41 explain why the allegations of Rule and Regulations violations were sustained.²²⁹ Moreover, the second paragraph of General Duty 101, Part J states that "Any false statement may lead to discipline." The Employer sufficiently proved that the Grievant made false statements or misrepresentations concerning the taking of photo(s) of Mr. Safi at the July 18, 2019 accident scene. The Arbitrator is of the opinion that the Grievant's denial of taking the photo(s) is not supported by the record in this case. Thus, her denial is viewed as evidence of her making untruthful assertions or misrepresentation of the facts during an official investigation.²³⁰

Moreover, some of her other statements regarding, inter alia, her knowledge of the car Safi was driving, whether he had LEIN access, and whether he collected information or interviewed witnesses at the scene, were also misrepresentations at the least. Furthermore, her disrespectful comments about the Sheriff in front of Stafford, and the two troopers (and her disrespectful comments about Mr. Safi to other members of the Department and to the troopers) were evidence of violations of Section F, Conduct Unbecoming. Her divulging to the troopers information concerning Mr. Safi having access to LEIN was not only a false statement, but also was sharing confidential information (albeit untrue information) and a proven violation of Section N. However, the Department failed to prove that the Grievant violated Section O concerning Public Appearances, since it failed to prove that she published an article concerning Departmental duties.²³¹

²²⁸ Employer Exhibit 5.

²²⁹ At the hearing, Pendergraft did point out one correction regarding a conclusion on page 45 (T. 187-188).

²³⁰ Even if the Grievant took the photo(s) but did not intend for them to be posted, her consistent denial of taking the photo(s) in the first place was violative of Part J.

²³¹ Assuming that the Employer was contending that the publication of information about the Department and about Mr. Safi on the Facebook page was the source of this alleged violation. Even if the photos taken by the Grievant ended up on the subject Facebook page, there was no direct evidence that the Grievant herself caused them to be published or that she forwarded them on to someone who in turn published them. Because no one who testified or who was interviewed claimed that they saw the photos taken by the Grievant at the scene and the photos posted were the same ones, only circumstantial evidence supports the Employer's assertion of this Rule violation. Moreover, the record reveals that many individuals in the Department knew the internal information regarding Mr. Safi that was shared in the subject Facebook post.

Even under the stricter “clear and convincing” standard of proof, the Arbitrator finds that based on the entire record before her, the Employer proved that, at least to some degree, Department Order 101, Part 1, General Duties, Part J, False Statements;²³² Department Order 101, Part 2, General Conduct, Part F, Conduct Unbecoming; and Department Order 101, Part 2, General Conduct, Part N, Confidential Information were shown to have been sufficiently violated.²³³

The Arbitrator has made this determination in accordance with her duty to weigh the testimonial and the documentary evidence and to carefully consider the issue before her. The Union and the Employer selected her to hear and decide this dispute; this finding regarding which offenses were proven is the result of such consideration.

Under the next query in a just cause analysis, the question is whether the discharge penalty was appropriate. As the Union pointed out in its brief, Discharge is the most extreme form of industrial penalty.²³⁴ Termination of an employee should never be taken lightly.

The problem with gauging appropriateness of the penalty is that the Arbitrator has to be careful not to substitute her own judgment for that of the Employer. This has been recognized by many arbitrators as far back as Arbitrator McCoy in *Stockham Pipe Fittings*.²³⁵

The mere fact that management has imposed a somewhat different penalty or a somewhat more severe penalty than the arbitrator would have, if [s]he had the decision to make originally, is no justification for changing it...The only circumstances under which a penalty imposed by management can be rightfully set aside by an arbitrator are those where discrimination, unfairness, or capricious or arbitrary action are proved – in other words, where there has been abuse of discretion.

This view has been adopted in more recent arbitral decisions. For example, In *Caro Center*,²³⁶ the Arbitrator explained:

...In my opinion, the bottom line followed by the majority of Arbitrators is that where the discipline/discharge appears unreasonable in the light of all the facts, the Arbitrator has the authority to modify or vacate it. But I am also of the view that management’s decision should not lightly be upset if within broad parameters of reasonableness.

Given all the facts and circumstances of the subject case, the undersigned cannot say that the County acted discriminatorily, or in an arbitrary or capricious manner, when it opted to discharge

²³² Even if one could somehow contend, arguendo, that the Grievant was not adequately proven to have taken the subject photo(s), the other examples of credibility deficiencies due to a variety of inconsistencies in her interviews and testimony still result in a finding that Department Order 101, Part 1, J was violated.

²³³ The October 21, 2019 “Notice of Discipline,” (Employer Exhibit 45) however, is now determined to have incorrectly reported in #2 that “Officer Stafford should seek advice from Sgt. Hansen regarding what [the Grievant] should do with photographs of Special Deputy Sam Safi at the accident scene on M-21” since this was not proven. This deficiency, however, is not enough to find that the Notice of Discipline should not have been issued. Even without this element, there were enough substantiated findings to support the discipline.

²³⁴ Citing *Hussman Refrigerator Co.*, 68 LA 565 (Mansfield, 1977).

²³⁵ 1 LA 160, 162 (McCoy, 1945).

²³⁶ 104 LA 1092 (Kanner, 1995). *See also*, *Englehard Corp.*, 122 LA 81 (Howell, 2006).

the Grievant for violating the rules and regulations cited. Even after dropping the Department Order 101, Part 2, Part O Charge from the findings, since it was not proven to have been violated, the three other proven violations merit strong discipline. Thus, even if the undersigned might not have imposed the most severe penalty of discharge on the Grievant, the Arbitrator cannot say that the Employer acted beyond the bounds of reasonableness in issuing this penalty.

It also bears mentioning that this finding is made despite the Union's vigorous representation of the Grievant, leaving no stone unturned in advancing its arguments, and in submitting a 55 page brief on the Grievant's behalf. This case was not an easy one, for all involved.

AWARD

Based on the above analysis, the particular facts and circumstances of this case, and a careful consideration of the voluminous record as a whole, the Employer is determined not to have violated the CBA when it suspended and then terminated the Grievant's employment. The Arbitrator therefore denies the subject consolidated grievances.

DEBORAH M. BRODSKY, LLC

Dated: June 28, 2022

By: /s/Deborah M. Brodsky