IN THE MATTER OF ARBITRATION BETWEEN

INTERNATIONAL UNION OF POLICE ASSOCIATIONS, LOCAL 3, AND PATRICIA SWINNEY,	)	
Grievants,	)	**T. Zane Reeves** **Impartial Arbitrator**
and	)	**FMCS No. 070508-56408-8**
CITY OF SHAWNEE, OKLAHOMA,	)	
Respondent.	)	

BACKGROUND

The Parties, the International Union of Police Association, Local #3 ("Grievant") and the City of Shawnee ("City") selected T. Zane Reeves, to resolve the dispute between them and an arbitration proceeding was convened in Shawnee, Oklahoma on September 12 and October 25, 2007. Douglas Vernier, Attorney at Law, represented the Grievant and Margaret McMorrow-Love, Attorney at Law, represented the City. The Court Reporter was Terry White. The Parties provided post-hearing briefs to the Arbitrator on December 15, 2007.

ISSUE and REQUESTED REMEDY

Whether the discharge of Corporal Patricia Swinney was for just cause and, if not, what shall be the Remedy? The Grievant petitions to be reinstated to her former position, with full back pay, benefits, and seniority.

INTRODUCTION

The International Union of Police Association, Local #3 ("IUPA") and the City of Shawnee ("City") are parties to a Collective Bargaining Agreement ("CBA"), entered into pursuant to the terms and requirements of Oklahoma's Fire and Police Arbitration Act ("FPAA"), 11 O.S. § 51-

101 et. seq. As such, the IUPA is the duly designated bargaining agent for Shawnee police officers. By the terms of the CBA and the FPAA, disputes "with respect to the interpretation, enforcement, or application of the provisions" of the CBA are to be resolved through final and binding arbitration. By mutual agreement, the Parties select a mutually acceptable arbitrator from a list provided by the Federal Mediation and Conciliation Service.

POSITION OF THE CITY

The instant grievance results from City's March 2007 termination of Corporal Patricia Swinney. City terminated Swinney for three stated reasons, as articulated by Chief of Police William Mathis: 1) Complaint No. 06-11 Neglect of Duty & Insubordination regarding Americorp duties; specifically, that during the period of November through December 2006, the Grievant did not adequately fill out and turn in paperwork related to an Americorp Grant Project to the City, 2) Complaint No. 06-10 Insubordination against Mathis; specifically, that the Grievant failed to turn off a tape recorder when told to do so by the Chief, 3) and Complaint No. 07-02, Maliciously Filing a False Police Report; specifically, that the Grievant filed a false police report against the Chief asserting the Chief assaulted her during a meeting. The decision to discharge the Grievant was based on all three reasons, but mainly because of filing a false police report.

POSITION OF THE UNION

The Union contends that the City's termination of the Grievant was not for just cause. She was a twenty-three (23) year employee with outstanding performance evaluations. The Grievant was never given clear instructions for handling the AmericCorp grant or trained to administer the grant. The Chief of Police over-reacted by giving the Grievant an unlawful order to turn off the tape recorder and then pushed her, which resulted in the filing of a police report. The Chief

violated the Grievant's due process rights by acting complainant, prosecutor, and judge in this matter. The investigation prior to imposing discharge was neither fair nor properly conducted.

FINDINGS OF FACT AND DISCUSSION

The Grievant was employed with the Shawnee Police Department ("SPD") for twenty-three (23) years prior to her termination; she has no prior disciplinary actions in her employment record. The Grievant was assigned as the Community Relations Officer ("CRO") since March 2005 and served as the first CRO for the SPD. The City's current City Manager, James Collard, hired the Grievant as the SPD's first CRO. The Grievant's performance as CRO during the time that she reported to Collard either met or exceeded expectations in all categories. The Grievant received her annual performance evaluation in October 2006 from Lt. Young, which covered the period of October 16, 2005 through October 23, 2006. On this evaluation, the Grievant was rated "satisfactory" and above in the performance categories and received "above standard" evaluations in the areas of "cooperation", the ability to work with other employees or the public, and use of time."

As CRO, the Grievant's responsibilities included such tasks as working with the community, from teaching about domestic violence to working with the Santa's Kids project. About seventy-five percent of her time was devoted to the "Under 21" project at local schools. The Grievant received numerous accolades over the years for her service as a police officer in Shawnee, i.e., Woman of the Year in October 2006 and an award from the Governor of the State of Oklahoma in October of 2006 for her service to the Shawnee community.

Just cause

It is undisputed that the City's termination of the Grievant must be for just cause and the City has the burden of proof in disciplinary cases. Generally, an employer must prove their case by the preponderance of the evidence. "Discharge and disciplinary action by management has been reversed where the action violated basic notions of fairness or due process." ***ELKOURI, supra.* at 918**. "Industrial due process" as a "component of **just cause**" is "widely accepted by arbitrators." ***ELKOURI, supra*.** "Under due process, management must meet certain requirements, and where it fails to do so most arbitrators refuse to sustain the discharge or discipline assessed against the employee." ***ELKOURI, supra* at 919**. **ELKOURI** points out:

> A just cause proviso, standing alone, demands that certain minimal essentials of due process be observed. At least one of those minimum essentials is that the accused have an opportunity before sentence is carried out, to be heard in his own defense. . . It is the *process*, not the *result* which is at issue.

Typically, in cases involving reputation loss, the standard of *clear and convincing proof* is used. The rationale behind the requirement of a higher standard of proof in these cases is that an employee is not only being deprived of a job, a career, and in this case a pension, but also his or her good name.

The City discharged the Grievant for three alleged violations:

1) Failure to manage Americorp grants

With regard to the Americorp duties, Collard terminated the Grievant because he was under the impression she had not filled out forms. The Chief took the position that the Grievant was responsible for Americorp paperwork. With regard to this complaint, if it were an "isolated" event, Mathis testified that he would have recommended a letter of reprimand and removal from her CRO duties. City Manager Collard considered the following: 1) A conversation with the

chief, 2) the investigation from Corporal Greg Gibson, 3) and the statement of Kellie Howard. Chief Mathis' complaint alleges neglect of duty and insubordination. However, the Internal Affairs Investigation by Corporal Gibson did not find evidence to sustain the charge of "insubordination" on this complaint.

One of the necessary ingredients of just cause is an employer must provide the employee "actual communication of the rules and penalties." The employer must prove the employee knew what the duties were and failed to perform those duties. The Chief alleged that the Grievant was responsible for, but did fill out and turn in forms related to the Americorp grant, even though investigator Gibson found conflicting evidence regarding who was responsible for administering the grant. Testimony and evidence presented at the arbitration hearing underscored the confusion and lack of clarity surrounding administration of the grant, as follows:

First, the Chief's complaint specifically alleges the Grievant was not performing Americorp duties from *October through December 2006*. However, according to then Administrator of Support Services Kellie Howard, who was the person in charge of the Americorp grant, there were no problems in October 2006 with Swinney's performance on Americorp.

Secondly, the Grievant had not previously been involved with Americorp and she met with Howard on October 23, 2006 to tell Howard that she did not know anything about Americorp and needed to have training on its guidelines. The Grievant testified that Howard told her that she did not need training because Howard had worked on Americorp before and it was "easy." The Grievant stated that Howard did not go over forms, responsibilities or deadlines with Swinney at the meeting. The Grievant testified that she was never invited to attend any training seminars on Americorp. One of the "axioms of arbitration" is that an employer should

never apply disciplinary action to an employee who has not been trained to perform a particular job; they should be trained.

Thirdly, it also was unclear who was responsible for supervising Bryan Miller, the City's Americorp grant volunteer. The Grievant recounts that in November 2006, she was told to "keep track of Bryan's time that he spent with me [her] and turn in the projects that we were working on." The Grievant stated Howard did not tell her that she was responsible for turning in paperwork, rather she said Bryan Miller, would be responsible for that task. In an October 4, 2006 email by Howard to Garry Young, Howard stated that the grant volunteer "will work with Candie, yet give me all of their reports for the grant purposes." Based on this email, the Grievant understood the Chief had agreed Miller would give the reports to Howard, who was the person responsible for "overseeing the paperwork and turning in the paperwork for the grant on the due dates to the grantor." The Grievant testified that she was not told what her responsibilities were when Miller was interviewed, other than she would determine which projects Miller would help her with and keep track of the time he spent with her.

At all times relevant to the allegations concerning performance of Americorp duties, the Grievant only reported to Lt. Young. Furthermore, during the entire time of the Americorp grant project, the Grievant did not report to Kellie Howard, as verified on the SPD organizational chart. As stated by Howard, Lt. Young "oversees Candie Swinney so ultimately any actions that she wasn't taking that I—to follow the chain of command in the police department, I was to get with her supervisor." The Chief instructed Howard to work through Lt. Young on Swinney's involvement with Americorp. On October 31, 2006, Howard sent an email to Lt. Young and stated that if there were any "problems" with Americorp she would let him know.

Therefore, it is reasonable to expect that any problems that arose would be evidenced in documented communication between Ms. Howard and Lt. Young. In an email from Howard to Lt. Young and the Grievant, copied to the Chief, Howard states, "Bryan Miller is now 2 months behind on his grant paperwork and not fulfilling the requirements with the police department. He is also unable to be reached by phone." Lt. Young, who was not subpoenaed to testify at the arbitration hearing, made the following statement about the December 11, 2006 email:

> "During the time frame of October through December 2006, Corporal Swinney and even B. Miller would come in my office to report projects that they were working on. Such projects were conducting police recruiting at one of the colleges and graffiti cleanup in Shawnee. At no time was I ever advised by Corporal Swinney, B. Miller or K. Howard of any problems concerning the Americorp program. The first indication of a problem concerning Corporal Swinney and the Americorp grant was when I received and email on December 11th, 2006, from K. Howard requesting a meeting."

Nor does Howard say in this email that she has complaints about the Grievant's performance; if there really were problems with the Grievant's performance, it would seem logical that Howard would have reported those to Lt. Young, as she said she would do.

The absence of such reports makes the City's allegations of continuing problems suspect. If there were any issues, Howard's failure to timely work out any alleged "issues" through the Grievant's supervisor is not cause for disciplinary action against the Grievant. Thus, the City did not prove, through a preponderance of evidence, that the Grievant had responsibility for grant administration or that performance problems extending from October through December were a cause for disciplinary action. On December 21, 2006, ten days after Howard brought "problems" to Lt. Young's attention; the Chief relieved the Grievant of duty, placed her on leave and subsequently fired her.

Whatever the "problems" were, the Chief admitted all issues were resolved except for "paperwork was not completed." The only form required by the Grievant to fill out was a regular time slip, which she turned in every week to Young. There is no notation from Lt. Young that the Grievant was not turning in these regular time slips. Furthermore, the City did not produce a copy of any document that it claims was not properly filled out. Just cause requires City to provide "substantial evidence or proof that the employee is guilty as charged." Brand, supra. at 32.

In a December 4, 2006 email, Howard asked the Grievant to let Bryan know, "That I am needing my book returned and the October and November monthly reports turned in to me by the due date of December 5th." Howard did not tell the Grievant that she was to turn in the reports; Howard's request indicates that the October and November reports were not turned in because of Bryan, not because of the Grievant. After receiving this email, the Grievant spoke with Bryan and told him to turn in his reports. The City did not offer evidence at the arbitration hearing that the paperwork was far behind and overdue.

There is no credible evidence in the record to support City's allegations that paperwork was not turned in. Kellie Howard testified they received "most of the paperwork on December 18, 2006 but could not "remember," what paperwork was not received. The allegation of missing paperwork fails if it cannot be determined specifically what was missing.

Kellie Howard also alleged that the paperwork turned in was not accurate, yet it was Miller who calculated the hours, not the Grievant. Again, the City provided no proof that any paperwork was left unsigned or that the Grievant did not sign what was turned in. Lt. Young's statement refers only to paperwork not being "accurate", not that paperwork was incomplete.

Thus, City failed to prove paperwork was inaccurate or that any inaccuracies were attributable to the Grievant.

The City does not dispute that the Grievant continually contacted Miller or tried to obtain from him whatever paperwork was available. There is no dispute that throughout November and December, the Grievant continually told Howard that Miller was not turning in paperwork. The City did not dispute Miller was not responsive. In fact, by January 2007, the City let Miller go from his position because Howard informed Chief Mathis, "it was difficult getting him to respond to calls and such…" and Miller did not report to work for about 3 ½ weeks after the Grievant was placed on leave.

The Grievant was relieved of duty on December 21, and on December 28, 2006, Amy Caswell, the Americorp grants Coordinator, emailed Howard inquiring about grant paperwork. One week after Swinney was relieved of duty, Howard had still not turned in the paperwork that the City asserted was so urgently required. Instead, Howard called Caswell and was told, "As soon as you can get it, go ahead and turn it in." In the end, Howard's impression about late paperwork was that it was "no big deal."

Finally, the City argued the paperwork was important to prevent having the grant cancelled. However, the grant was not cancelled against City's wishes; the City withdrew from the grant on its own volition. According to testimony at the hearing, no one from the state informed the City that the grant would be terminated. In fact, the state informed City it would work with City on the grant. Even though the paperwork was eventually turned in, City still did not want to continue the Americorp program.

2) Complaint No. 06-10 Insubordination against Mathis

Complaint No. 06-10 charges the Grievant with insubordination, because the City Manager believed the Grievant was insubordinate by disobeying a "directive" given by the Chief to turn off her tape recorder at a meeting on December 21st. This is the sole reason that the City Manager disciplined the Grievant for insubordination---the Chief told the Grievant to turn off the recorder, but she did not do so. The Chief stated that had this complaint stood in isolation, the recommended disciplinary action would have been a letter of reprimand and demotion from corporal. Chief Mathis stated he recommended discipline on this complaint for "disobedience of orders and insubordination." Disobedience of orders and insubordination are two distinctive policies in the SPD. The only allegation in Complaint 06-10 is insubordination, not disobedience of orders.

The Grievant and Miller were asked to attend a December 21, 2006 meeting with Chief Mathis, Howard and Lt. Young, to discuss Americorp. The Grievant began tape-recording that meeting because she did not want there to be any more misunderstandings about Americorp and who was to do what. The tape recorder was sitting on top of a book in her lap at the table Chief Mathis did not tell the Grievant to turn off her tape recorder during the entire portion of the meeting attended by Miller.

After Mr. Miller was excused, the following exchange ensued:

"Mr. Mathis: Okay. Candie, before we go any further, is this being recorded?

Ms. Swinney: Uh-huh. Sure is.

Mr. Mathis: You need to turn that tape recorder off.

Ms. Swinney: No, sir.

Mr. Mathis: That's an order.

Ms. Swinney: No, sir.

Mr. Mathis: Now, it takes the permission when you're under investigation from each individuals in there to be tape recorded or not.

Ms. Swinney: I'm under investigation?

Mr. Mathis: Yes, you are.

Ms. Swinney: For what?

Mr. Mathis: In a minute. I'm running this interview. Turn that tape recorder off.

Ms. Swinney: Then I want my union rep here.

Mr. Mathis: No.

Ms. Swinney: Yes, sir, I want my union rep here.

Mr. Mathis: No, you're not going to get your union rep right now. You're not—there is no disciplinary action.

Ms. Swinney: You're telling me that I'm under investigation. What have I done?

Mr. Mathis: Don't argue with me. I'm going to tell you how we're—I'm running this meeting.

Ms. Swinney: Okay.

Mr. Mathis: I'm giving you a direct order to turn that tape recorder off.

Ms. Swinney: Okay."

Swinney did not turn off the recorder when Mathis initially told her to turn it off because she did not think it was a lawful order. State law allows an officer to record, and there was nothing in

SPD policies that prohibited recording the meeting. At the arbitration hearing, City claimed the meeting should not be recorded, alleging it was about personnel issues.

Even though the Chief had allowed the Grievant to record the first part of the meeting with Bryan Miller present, he decided not to allow the remainder of the meeting to be recorded. It is the Chief's prerogative to decide whether a meeting may be taped and it is not unlawful for him to ask an officer to cease recording a meeting. The Officer may believe that is "unfair" or perhaps "inconsistent," but it is not an illegal order. The time worn adage in such situations is to "obey now, grieve later."

However, the Chief did violate the Grievant's right to a *Weingarten* representative at the December 21, 2006 meeting. The Weingarten right is fundamental in labor-management relations (University of Hawaii, 2006):

> "The right of employees to have union representation at investigatory interviews was announced by the U.S. Supreme Court in a 1975 case (*NLRB vs. Weingarten, Inc.* 420 U.S. 251, 88 LRRM 2689). These rights have become known as the *Weingarten* rights.
>
> Employees have *Weingarten* rights only during investigatory interviews. An investigatory interview occurs when a supervisor questions an employee to obtain information, which could be used as a basis for discipline or asks an employee to defend his or her conduct.
>
> If an employee has a reasonable belief that discipline or other adverse consequences may result from what he or she says, the employee has the right to request union representation. Management is not required to inform the employee of his/her *Weingarten* rights; it is the employee's responsibility to know and request.
>
> When the employee makes the request for a union representative to be present management has three options:
> (1) it can stop questioning until the representative arrives.
> (2) it can call off the interview or,
> (3) it can tell the employee that it will call off the interview unless the employee voluntarily gives up his/her rights to a union representative.

The Weingarten right has been reaffirmed in Oklahoma for local police and firefighters in *IAFF, Local 1628 v. City of Shawnee*, PERB No. 220 (The City was ordered to cease and desist violating Weingarten when it denied an employee's request for a union representative upon belief that he was under investigation that could result in discipline) and *FOP, Lodge 123 v. City of Oklahoma City*, PERB No. 432 (Violation of State law for City to deny union representative to employee under investigation who "reasonably believed" he "might" be subject to disciplinary action).

In the instant matter, the Grievant asked Chief Mathis, "I'm under investigation?" He replied, "Yes you are." A reasonable person would conclude that being under investigation could result in disciplinary action. She therefore asked for a union representative because she felt like the meeting might lead to disciplinary action. The Chief's statement later in the meeting that "there is not discipline" is not probative of the issue. The Grievant is entitled to a union representative if she reasonably believes the meeting might lead to disciplinary action. Instead, Mathis refused her request for a union representative. Clearly, the Grievant was denied her Weingarten right to representation.

3) Filing a false police report and due process

The most egregious offense alleged by the City is that the Grievant "deliberately and maliciously filed a false police report, indicating that Chief of Police Mathis committed an assault and battery on her person. The incident leading up to the report's filing has been described somewhat differently by various witnesses.

The Chief alleges the Grievant "deliberately and maliciously filed a false police report indicating the Shawnee C.O.P. (Mathis) committed an assault and battery on her person." Just cause requires s a precise statement of the charges against the employee. "Any reason the

employer tends to rely on for a discharge must be either stated in writing or communicated to the employee… 'The discharge…must stand or fall upon the reason given at the time of discharge.' The employer may not give the reasons for the discharge and then alter or add to them at the arbitration hearing." Brand, *supra.* at 43.

The City had the burden to prove Grievant deliberately and maliciously filed a false police report asserting Chief Mathis committed assault and battery. Investigator Greg Gibson did not find the Grievant's report was made maliciously. Mathis sustained Gibson's findings, and City is therefore precluded from now arguing the Grievant's report was done maliciously.

There was no evidence presented at the arbitration hearing that filing the police report was a wrongful act done without cause. The Grievant filed the report because she believed Mathis assaulted her and there was no evidence brought out that the Grievant believed Mathis did not assault her and filed the report anyway. Filing the police report was not a wrongful act. The Grievant filed a letter to Dr. Collard concerning Mathis' actions against her in the December 21st meeting. Chief Mathis filed his complaint alleging Swinney filed a false police report on January 26, 2007.

Nevertheless, the City failed to prove the Grievant filed a false report; her "voluntary statement" attached to the police report reads as follows:

> "He then came around where I was sitting and reached for my recorder as I had it in my hand he grabbed it, examined it and started erasing my tape of what he had said to Brian and I. I reached for my recorder, which he held in his right hand and he pushed me with his left hand and my recorder fell to the floor to the left of me."

The Chief admitted that after the Grievant shut off her tape recorder, he came around the table to where the Grievant was seated, saying he wanted to make sure the recorder was turned off. Chief Mathis grabbed the recorder from her hand. While standing over the Grievant, Mathis

fidgeted with the buttons on the recorder, causing the recorder to sound as if it was rewinding or erasing. The Grievant stood up and told Mathis he could not do that; that the recorder was her "private property."

It is undisputed that Mathis held the recorder in his right hand and the Grievant reached for the recorder with her left arm. Mathis pulled back on the recorder and Mathis struck the Grievant as she was reaching for the recorder. Mathis' left arm was free at that time, the same arm with which the Grievant alleges Mathis struck her. Mathis was unable to hold onto the recorder and it fell to the floor. The Grievant, not Mathis, picked up the recorder. One may disagree whether what happened was sufficient to amount to an assault and battery, but that does not make the content of the Grievant's statement maliciously false.

The Grievant wanted away from Captain Mathis because she was in fear, so she left the meeting room. A reasonable person would conclude that it would be quite unnerving to have your boss, particularly someone twice your physical size and armed, come around the table with the intent to take something away from you. The Grievant filed the police report because she believed Mathis had assaulted her.

Chief Mathis turned the police report over to the District Attorney's office for an investigation. DA investigator Russ Hubbart investigated the Grievant's report and testified that the Grievant demonstrated to him how she was pushed by Mathis, indicating Mathis' arm moved in a "sweeping motion" and contacted her arm with enough force to cause the tape recorder to fall to the floor. Hubbart testified that "could be" evidence of assault, "you could construe that as an assault." Hubbart also testified a person "may feel like you were assaulted, you know. You may actually have that—the feeling that you were assaulted if there was a push, a shove, a

touch or whatever..." and just because charges are not filed, does not mean the report of assault is false.

City Manager Collard fired the Grievant upon his belief that the DA had concluded there was "no evidence to support" the Grievant's claim of assault, but Collard's belief is not congruent with Hubbart's findings. Collard did not speak with the DA at all to find out; he relied on Mathis instead. DA Richard Smotherman testified that at the arbitration hearing there was evidence of an assault, but that he had declined to file assault charges against Mathis. Collard incorrectly assumed there was no evidence of an assault and terminated Swinney upon that incorrect assumption. There was evidence of assault, but not sufficiently compelling to file criminal charges against the Chief of Police. Thus, the City failed to sustain its allegation that Swinney filed a false police report.

It must be noted that Kellie Howard's testimony stating she did not see an assault is not meaningful under the circumstances. Her own testimony verifies that Howard did not observe what was happening vis a vis Mathis and Swinney at the time of the contact. There is no dispute the Grievant asserts Mathis struck her between the time she was reaching for the recorder and the recorder came out of the Chief's hand and the time the recorder fell to the floor. There is no dispute the Chief was unable to hold onto the recorder as Swinney reached for the recorder. There is no dispute the recorder then fell to the floor; both the Chief and Grievant give these accounts. Yet, Howard's says she remembers the Chief was able to keep hold of the recorder and that it did not come out of his hand and Howard says she did not see the recorder fall to the ground.

These two "observations" by Howard are completely and materially different from what *both* Mathis and the Grievant say happened. Howard testifies to two events completely contrary

to what Mathis and the Grievant say happened. Howard admitted at the arbitration hearing that it is "possible" she did not see "everything" that happened, especially between the point when Mathis held the recorder in his right hand and the point where the recorder was returned to the Grievant. Apparently, Howard did not tell Russ Hubbart that it was possible she did not see everything. The City's allegation that Swinney filed a false report is not supported by Howard's recollections.

Howard's accounts of other events in the meeting of December 21st are equally contrary to the accounts of Mathis and the Grievant. Howard recalled the Grievant pulled the tape recorder out of her front uniform pocket when Mathis asked her if she was recording the meeting. The recorder was on the Grievant's book according to the Grievant and Mathis, not in the Grievant's pocket. Howard says when Mathis walked around the table to the Grievant's position, Mathis picked the recorder up off the table. Mathis says the Grievant handed him the recorder, the Grievant says Mathis grabbed the recorder from her hand.

The City failed to prove the Grievant's statement in the police report was maliciously false. The base reason for firing the Grievant, an assumption there was "no evidence" to support the Grievant's assertion that Mathis committed assault and battery, is an incorrect assumption. The DA's investigator found there was evidence and evidence was presented at the arbitration hearing. Again, the City may disagree that what happened was an assault and battery. but that does not mean the Grievant's statement is false or malicious.

CONCLUSIONS

The City's termination of "Candie" Swinney is not supported by just cause. The City failed to provide her with due process, especially denial of her Weingarten rights and its failure to follow principles of progressive discipline. City failed to carry out a careful, thorough or unbiased

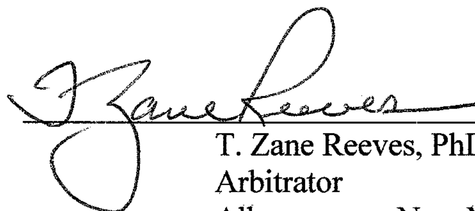
investigation. The City did not prove its allegation that the Grievant failed to administer properly the AmeriCorp grant. Secondly, although the Grievant should have turned off the tape recorder, when requested to do so by the Chief, his overreaction by coming around the table to turn off the recorder forcibly was completely inappropriate. Thirdly, Swinney did file a police report asserting Mathis pushed her, as any citizen can do if he or she believes assault has occurred; the City failed to prove Swinney's report was made maliciously or was false.

AWARD

Having heard argument, considered the credibility of witnesses, and weighed the evidence presented at the arbitration proceedings, the Arbitrator finds that the City of Shawnee did not meet its burden of proof to demonstrate just cause through the *preponderance of evidence* to discharge the Grievant. The City is ordered to reinstate the Grievant to her position as Corporal, to rescind any and all disciplinary action, and to make her whole in every respect, including back pay, benefits and all other terms and conditions of employment and that record of said disciplinary action be removed from all personnel files.

Respectfully submitted,

January 4, 2008
Date



T. Zane Reeves, PhD
Arbitrator
Albuquerque, New Mexico