EXHIBIT

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October 30, 2020

Chair Barry Clegg
Public Safety Work Group Co-Chair Andrea Rubenstein
Public Safety Co-Chair Toni Newborn
City Hall - Room 304
350 South Fifth Street
Minneapolis, MN 55415

Re: Public Safety Work Group Information

Dear Chair Clegg and Co-Chairs Rubenstein and Newborn:

I have been "attending" all of the virtual meetings of the Work Group and wanted to thank you and your colleagues for the time and attention you have invested in the very important matter of the proposed Charter Amendment that would eliminate the Police Department from the City Charter. I know that there was some discussion during a recent meeting as to whether you might want to hear from me as the attorney for the Police Federation. Since the invitation has not been extended and the deadline to complete your work is near, I am assuming that you have made the determination that there is simply not time to allow for me to appear to answer your questions regarding collective bargaining, the disciplinary process (including arbitration), and the role of the Police Federation relative to improvements to the Police Department and its relationship with the community. Therefore, in lieu of this testimony, I have decided to write to you to share what I would answered in response to your anticipated questions on these topics so that when you make your final considerations you will have accurate information rather than have to rely on or be influenced by the multitude of inaccurate information and/or perceptions that have been directed at you.

Collective Bargaining

Under the Minnesota Public Employment Labor Relations Act (PELRA), a public employer is obligated to meet and negotiate with a union certified as the "exclusive representative" of a designated group of public employees regarding "terms and conditions of employment." PELRA defines "terms and conditions of employment" as "the hours of employment, the compensation therefor including fringe benefits except retirement contributions or benefits other than employer payment of, or contributions to, premiums for group insurance coverage of retired employees or severance pay, and the employer's personnel policies affecting the working conditions of the employees." Accordingly, these items are commonly referred to as "mandatory subjects of bargaining" – meaning that the employer cannot unilaterally impose them, but instead must

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result from mutual agreement at the bargaining table. Mandatory subjects of bargaining also include any existing language already in a collective bargaining agreement.

The present Labor Agreement between the City of Minneapolis and the Federation was not drafted by the Federation and thrust upon the City. Every clause, word, and punctuation mark was negotiated by representatives of the City and the Federation and then approved by the Executive Committee and City Council and then signed by the Mayor, the City Attorney, the City Coordinator and the City's chief labor negotiator. The Federation bears no more blame for any provision of this document than the staff and elected officials who negotiated and then approved it. Moreover, pursuant to PELRA, it cannot be changed merely because newly elected officials (or some of their constituents) do not like it. Changes must be negotiated.

That said, over the 30 years I have represented the Federation, we have been amenable to numerous changes sought by the City's leaders and the Police Administration. For example, in the negotiations the resulted in our current agreement, we agreed to provide more flexibility in the assignment of officers, restricted the ability to earn and use compensatory time to save overtime expenses, and amended language to achieve then Chief Harteau's desire to periodically move officers into new assignments so they do not become stagnant. In addition, the Federation has frequently taken a leadership role in working with the City's Labor Relations staff and the City's Attorney's office to develop uniform model language for all City labor agreements regarding important measures such as our health plan and related benefits, drug and alcohol testing, and severance compensation. The Federation has also worked closely with the Labor Relations staff in between rounds of bargaining to address problems as they arise in order to avoid disputes and improve operations. Those who paint the Federation as obstructionist are simply uninformed or deliberately misrepresenting the relationship the Federation has worked very hard to cultivate and maintain with the Labor Relations and Police Department leadership.

With regard to our current labor agreement, [1] sadly, we have had only one negotiation session since March (and that session adjourned after only a few minutes at the recommendation of the State-appointed mediator when there was a legal question over the classification of information to be shared as a result of the data request made by the Minnesota Department of Human Rights). Initially, the interruption in our negotiations was due to COVID, but after the technical difficulties of doing "virtual meetings" was resolved, it was because the Chief of Police and Mayor publicly announced that, contrary to the requirements of PELRA that employers "meet and negotiate in good faith," they were pulling out of negotiations with the Federation. It is hard for the Federation to bargain with parties that will not come to the table.

Another factor regarding the negotiation process is that we are in mediation. Pursuant to PELRA and the administrative rules of the Minnesota Bureau of Mediation Services (BMS) adopted thereunder, once parties enter mediation all issues which may be mediated are fixed based on the unresolved issues identified by the parties at the commencement of mediation. Therefore, both the Federation and the City are now barred from bringing new issues to the table. The City could, of course, negotiate a one-year agreement with the Federation for 2020, which would then

[1] The currently labor agreement expired on December 31, 2019. However, under PELRA, the parties continue to be bound by the terms of the expired Labor Agreement until a successor agreement is adopted.

clear the field to allow the City (and the Federation) to raise an unlimited host of new issues in bargaining for the successor to the 2020 agreement. However, the City must return to the bargaining (mediation) table to do so.

Lastly, it is important for you to know:

1. there is very little in the labor agreement between the City and the Federation that is not identical or substantially similar to the provisions of the 21 labor agreements that the City has with its other labor unions; [2] and

2. the document includes several provisions that are mandated by (or based on) PELRA and other state laws – such as

    - A grievance process for the resolution of all disputes, *including discipline*.
    - The right to go to binding arbitration on grievances the parties cannot resolve themselves.
    - Dues deductions
    - Management rights
    - No Strike clause
    - Right for defense and indemnity if sued for actions in the scope of duty
    - Notice of charges before taking an investigatory statement
    - Certain overtime provisions
    - Certain leaves of absence
    - Use of sick leave to care for family members
    - Drug and alcohol testing
    - Psychological testing

The main criticisms levied against "the Federation contract" relating to provisions that allegedly impede holding officers accountable. This is flat out false and is purely scapegoating the Federation and the labor agreement between the parties to deflect attention away from the failures of management. This is discussed in more detail below.

Disciplinary Process and Arbitration

Ever since the 1920 City Charter established the Civil Service Commission, there have been two principles that have governed the discipline of ***all*** City employees:

[2] Most of the differences relate strictly to things that are unique to policing (such as Injury on Duty benefits derived from Civil Service Rules and administrative leave provisions following a critical incident). There are some provisions that are the product of several rounds of bargaining, the most significant being the scheduling language which was substantially re-written in the last round of bargaining, but initially resulted from a pilot project in the 1990's when the Department proposed moving away from rotating 8-hour shifts and instead implement fixed 10-hour shifts established by a seniority-based bid system. To the extent you may be interested in the actual language of any of the City's twenty-two Labor Agreements, they are all available on the City's website at the following link: http://www2.minneapolismn.gov/hr/laboragreements/index.htm

1. Discipline must be for "just cause;" and

2. Discipline is intended to be corrective rather than punitive.

There are legally two parts to the "just cause" standard – just cause for imposing any discipline (meaning whether the evidence establishes that the employee knowingly violated a policy, rule, or law); and just cause as to the level of discipline. The employer bears the burden of proof on both elements. The right to contest discipline and the requirement that all public employee labor agreements contain a grievance process culminating with a right to binding arbitration was established State-wide by the Legislature when it enacted PELRA in 1971.

The disciplinary process for employees of the MPD starts with an allegation which can be brought either by someone inside the Department (which, contrary to public perception, is actually the majority of cases) or someone outside the Department. All internal complaints are investigated by Internal Affairs. An outside complainant may choose whether to have their complaint investigated by Internal Affairs or the Office of Police Conduct Review (OPCR). Once the investigation is complete, a determination is made as to whether the evidence supports a finding that the officer has violated a policy, rule, or law. If so, the Chief or their designee makes a decision as to the level of discipline.

Once the discipline is imposed, the employee and the Federation have a fixed and relatively short time to determine whether there is a sufficient basis to contest the discipline. **It is important to note that not all discipline is challenged.** If the decision is to challenge the discipline, the employee/Federation may seek a review through the grievance procedure under the labor agreement.[3] Alternatively, if the discipline is termination or demotion, the employee may contest it by requesting a hearing conducted by the Civil Service Commission, or – if the employee is a veteran – under the Veteran's Preference Act. Both the Commission and arbitrators under the Veteran's Preference Act also use the "just cause" standard.

These rights are NOT unique to Minneapolis Police Officers. These same rights belong to every Minneapolis employee and, in fact, every public employee in the State of Minnesota who is represented by a union (although some public employees in other jurisdictions may not have the right to a civil service hearing if their community does not have a civil service commission).

In recent years, arbitration rights for police officers have been routinely criticized. The most frequent criticisms are: 1) arbitration is flawed because in termination cases the employee gets their job back nearly half the time; 2) the decision are flawed because arbitrators have a financial incentive to "split the baby" which is unfair to employers; and 3) arbitrators are not accountable to anyone. I heard Mayor Frey and Chief Arradondo make these identical complaints to the Work Group on two separate occasions. You should know that these criticisms are entirely without merit.

[3] Remember, all grievances are defined by PELRA and the labor agreement as a dispute "regarding the application or interpretation of the labor agreement." In disciplinary cases, the alleged contract violation is that the discipline is without just cause.

The "Flawed System" Falsehood

There is small element of truth to the claim that a terminated police officer gets their job back nearly half the time – but the falsehood rests in the indictment of the system rather than providing the analysis and context as to why that is true. Last year, long before the events which precipitated the Charter Amendment, I anticipated that the brewing politicization of the arbitration process would result in legislative efforts to abolish it or substantially modify it. Therefore, I did an analysis of all arbitration awards in Minnesota since 2006[4] involving the termination or public employees and police officers specifically. In the cases in which a police officer's employment was reinstated, I read the entire arbitration award to determine why. I have shared these findings with the Work Group on Use of Deadly Force by police officers co-chaired by Attorney General Ellison and Public Safety Commissioner Harrington and certain legislators. A copy of my letter to their Work Group and the accompanying PowerPoint presentation I made to it in person is attached. It should be noted that Chief Arradondo was a member of that work group and was present when I gave my presentation and yet has chosen to continue to peddle this false narrative despite having been given the actual data.

The conclusion of my analysis was:

- Between January 1, 2006 and December 9, 2019, there were 67 arbitration awards involving the termination of a law enforcement officer (LEO). Termination was upheld – meaning the employer prevailed – in 37 of those cases (55.2%).

- During that same period, there were 421 awards involving the termination of other classes of employees. Termination was upheld in 223 of those cases (52.9%).

- Of the 67 cases involving LEOs, in 61 cases the basis for termination was misconduct by the officer (the other cases were for substandard performance, physical unfitness for duty and inability to perform the essential functions of the job).

- In the 61 misconduct cases, termination was upheld in 34 (55.7%).

- In the 27 cases where termination was overturned, 20 cases (74%) involved errors by management (17 in which the employer failed to prove that misconduct – or in cases involving multiple charges, serious misconduct justifying termination – occurred).

- There were only 7 cases in the 14-year period in which the arbitrator sustained the allegations but determined that termination was too severe.

- Of those seven cases, 6 resulted in reinstatement with no backpay – thereby having the effect of imposing unpaid suspensions ranging from 7 months to 17 months).

- Four of the seven cases involved off-duty conduct.

[4] This is the first year for which the Bureau of Mediation Services began publishing arbitration awards on its website.

- **In summary, there were only three cases in 14 years in which an arbitrator sustained the actual allegations of on-duty misconduct that the Employer asserted as just cause for termination (two involved excessive force and one involved untruthfulness), but nevertheless determined that termination was too severe.**

The important takeaway that Mayor Frey and Chief Arradondo failed to mention is that in the vast majority (74%) of the cases the employer lost, it lost because it failed to prove that serious misconduct occurred. Most reasonable people would not find a system "flawed" because it refused to uphold discipline when no serious misconduct was committed.

Moreover, what the proponents of the "45% argument" fail to mention is that roughly less than 50% of termination cases are even arbitrated. Most when a case is not contested it is because the union concurs that misconduct occurred and that termination is appropriate consequence. Other times, the parties are able to reach a settlement either for a lessor sanction or avoid arbitration by entering into a "last chance agreement" in which the employee waives the right to arbitrate termination if they commit another offense during the term of the agreement (most last chance agreements range from 2 to 5 years).[5] Thus, the actual percentage of terminated police officers who are reinstated by an arbitrator is really only about 20% – and when you further account for number of those who were found to have NOT committed a terminable offense, the number is closer to 4%. Mayors and Police Chiefs will not tell you that arbitration is broken over 4%, probably because no one would take them seriously if they tried to make that argument. So instead, they flagrantly and falsely use the 45% number as it deflects the attention away from managements failures – either by seeking termination when not justified or by failing to impose discipline in a manner that meets the just cause standard.

Two recent Minneapolis cases illustrate this point. In one, two officers punched a man in handcuffs severely enough that his injuries required hospitalization.[6] Despite the entire event being captured on video, the officers sat on paid administrative leave for roughly a year and then were returned to the job without discipline. One was assigned as a Field Training Officer and the other was given a different specialty assignment. Roughly a year after the officers returned to work, the media obtained the video and, following public pressure, Chief Arradondo fired the officers. Citing the fact that the Police Administration knew of the officers' conduct and, not only returned them to work, but also gave them special assignments with heightened responsibilities, the arbitrator concluded that such decisions by management constituted an admission that termination was too severe a consequence. While I have not represented the Federation or its members in disciplinary cases for several years, I can tell you that had the Administration terminated the officers immediately upon the conclusion of the investigation, it is quite likely that the Federation would not have even contested the termination. However, given the facts – cited by the arbitrator – and the Federation's legal obligation to provide fair

[5] These types of arrangements are most commonly used when the employee's serious misconduct resulting from a chemical dependency issue and are contingent upon sobriety and random drug testing. I can think of two specific cases involving Minneapolis officers in which I firmly believe that the Last Chance Agreement not only saved the officers career, but also by mandating sobriety saved their life.

[6] This was actually a case heard under the Veteran's Preference Act, but decided by an arbitrator from the BMS list.

representation to its members, the Federation could well have been subject to legal liability if it had NOT contested the termination.

The second case involves the recent arbitration award involving the "Christmas tree" case from the 4th Precinct. When the story first broke, the Mayor publicly decried the incident as "racist" announced that he wanted "the employees fired before the end of the day." The Mayor should have known that this type of knee-jerk reaction and public statement was wholly irresponsible since it is expressly contrary to the requirements of PELRA and other statutory provisions that are all incorporated into the Labor Agreement. In reality, the facts were blown out of proportion and the arbitrator concluded that while a very stupid and ill-advised prank, the evidence actually showed that it was not the racially motivated incident that it had been portrayed to be. More importantly, the Precinct Commander and a ranking supervisor who knew of the prank and not only did nothing about it, but tacitly condoned it, were not fired. The arbitrator reinstated the officer (the other officer retired before the hearing) on the grounds that there was no just cause for termination given the failure by the Employer to establish the alleged racial animus and the disparate treatment of the supervisors who should have been held to a higher (not lesser) standard. Again, based on the *actual facts* of the case – which included mismanagement by the Police Administration, the Federation really had little alternative but to contest the termination.[6]

Finally, arbitration is expensive. The arbitrator's fees are equally split between the parties (usually running $5,000 to $7,500 for each party in a termination case), plus the Federation incurs attorney fees roughly in the range of $15,000 to $20,000 (and sometimes more) per case to arbitrate a termination. Unions owe a fiduciary duty to their members and that duty includes spending the union treasury prudently. Therefore, all of the unions I represent (more than 30 across the state), will only arbitrate a termination case in which they have at least a 50/50 chance of winning. Therefore, and in conclusion, the 45% reinstatement number does not show that "the arbitration system is broken." Rather, it shows that Unions are pretty good at determining which cases they should contest.

The "Split the Baby" Falsehood

The argument here is that because arbitrators are selected by the parties striking names from an odd-numbered list of arbitrators, arbitrators have a financial incentive to decide cases in a manner that gives a "win" to both sides so that they will continue to be selected by other parties. Conversely, the argument is that if they were to actually call cases as they see them and too frequently ruled for one side or the other, they would not be selected. This argument is usually made only by people who have never selected an arbitrator. Speaking as someone who has engaged in the exercise dozens of times, my criteria (and that of my colleagues on both the union and management side) is to select an arbitrator who you trust to be reasonable, fair, and (depending on the nature of the case) experienced – not someone that is guaranteed to rule in your favor. In fact, your odds of getting a list containing the name of that arbitrator and having them pass through the striking process is probably less than winning the Powerball.

[6] Copies of both cases are attached for your convenience and review.

More importantly, this process is NOT used in Minneapolis. Roughly twenty years ago, the City and Federation selected our own panel of arbitrators who hear cases on a rotating basis. Therefore, our arbitrators have NO incentive to "split the baby" because they know that they are going to hear every fifth case when their name comes up in the rotation. However, notwithstanding this provision in our labor agreement and the extent to which it has served both parties very well, the Legislature, as part of its recent slate of "police reforms," amended PELRA to establish a special panel of arbitrators to hear only police disciplinary cases. While this panel will most likely not include any of the arbitrators that have served on our panel (since the Legislation mandated that the police arbitrators are prohibiting from hearing arbitrations involving any other classification of public employees), it preserves the rotation selection process which renders irrelevant (and FASLE) the "split the baby" narrative.

The "Not Accountable" Falsehood

The irony of this argument is that it is essentially the logical opposite of the "split the baby" argument. Pursuant the system created by PELRA and BMS (now for all public employees, *except* police officers), arbitrators were "accountable" to their constituents – namely public employers and public employee unions. An arbitrator whose awards repeatedly demonstrated incompetence or bias would not get selected. Further, BMS does maintain standards and the Commissioner may remove an arbitrator from the BMS list under certain circumstances. Thus, the complaint is meritless on its face. What the proponents of this argument are really saying is that because public employers invariably are governed by elected officials who are "accountable" to the voters; "accountability" for arbitrators means that they should be accountable to the employers – and rule as the employer wants.

In conclusion, I would expect you all to have some level of skepticism from a dissertation on the arbitration system from a union lawyer. Therefore, I also attach for your consideration a lengthy paper written by one of the most preeminent arbitrators in the United States in response to a recent editorial by the New York Times which raised the same criticisms of the arbitration system addressed above. Thus, when you weigh the potential bias of a union lawyer and an arbitrator, I would only ask that you also weigh the potential bias of management, before you reach any conclusions as to whether there actually is a problem with arbitration and the disciplinary process – and whether there should be a separate set of rules for police officers than for all other public employees.

The Role of the Federation

While it was difficult to sit silently and listen to the inaccurate testimony about the collective bargaining agreement and the discipline/arbitration process, I have to be honest in telling you that it was even more personally and professionally offensive to hear the Federation scapegoated by several elected officials as the impediment to change – even to the extent that it was asserted that the necessary changes cannot be implemented unless the Federation is abolished.[7] While

[7] Such statements constitute an "unfair labor practice" prohibited by PELRA. Under PELRA, unfair labor practices by a public employer include: interfering, restraining, or coercing employees in the exercise of the rights guaranteed under PELRA; dominating or interfering with the formation, ***existence***, or administration of any employee

this may well be the perception and belief of some, but there is no empirical evidence to support it. Rather, the contrary is true and would be corroborated if you were to speak with any of the Human Resources, Labor Relations or even Police Administration staff who actually deal with Federation representatives on a daily or at least weekly basis.

The very premise of these allegations is antithetical to the legal role of a union – which, at its very essence, is to negotiate and then enforce the terms of the collective bargaining agreement. Moreover, the allegation is illogical. Like any employee of any organization, the sworn employees of the Minneapolis Police Department want their agency to be the best it can be. They want to hire and retain only the best employees, not lousy ones. They want to be respected and trusted by the people they serve. They want to be led by competent, fair, and reasonable managers.

When one hears such allegations against the Federation or any other union, one must ask – why would a union act to intentionally undermine the ability to achieve the very interests of their members? The answer, of course, is that it wouldn't. This is not to suggest that any union, or the Federation, will always agree with every initiative or agenda advanced by management. However, I can honestly say that in 30 years of representing the Federation, under four separate presidents and countless different board members, the policy and practice of the Federation has remained consistent – and that is to work with Labor Relations, the Police Administration or any other city representative that may be involved in a particular issue to seek mutual agreement on policies, practices and contract provisions that will make MPD a better Department. While we may not always agree on the road to take, we always agree on the destination.

I was particularly struck by the testimony of Deputy Chief Fors at one of the Work Group sessions when he presented a list of roughly 75 reforms that the Police Administration had implemented over the last few years. I was hoping that one of you would ask him how many of those the Federation fought or attempted to block – because the honest answer would have been NONE.[8]

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organization; discriminating in regard to hire or tenure regarding an employee's membership in an employee organization; refusing to meet and negotiate in good faith with the exclusive representative of its employees in an appropriate unit; refusing to comply with grievance procedures contained in an agreement; and refusing to comply with a valid decision of a binding arbitration panel or arbitrator.

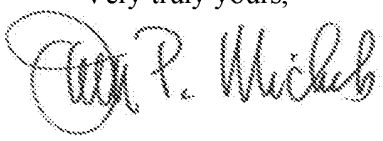
[8] I cannot honestly remember if banning "warrior training" was on that list. If so, one could argue that the Federation attempted to undermine that initiative. However, as Paul Harvey used to say, "there is more to the story." The objection to the Federation was not about banning training that was (wrongfully) perceived to be training to justify police officers in using unnecessary force. The Federation's main objection was that this training, while admittedly insensitively named, actually was training to keep officers safe and even included de-escalation techniques. Banning it without having a replacement in place was viewed in much the same way that many people found (and, with a Supreme court case looming during a pandemic, still find) it objectionable to repeal the Affordable Care Act without a replacement. The secondary objection was the way the decision was announced by the Mayor with no prior notice to the Federation or even the Police Administration (a common communication problem with Mayor Frey). For years, the Federation and Police Administration have maintained a robust labor-management committee designed to discuss and jointly analyze such matters before they are implemented. This helps work out unclear provisions and potential areas of disagreement before, rather than after the fact – thereby helping to ensure "buy-in" and compliance from employees. The squad video and body camera policies are prime

Contrary to the allegation, the Federation has been and will continue to be a collaborative partner in improving the Minneapolis Police Department. However, collaboration is a two-way street. One side cannot repeatedly vilify the other and expect trust and cooperation to flow back the other way. If the City's elected officials truly want to make MPD better, they would be better served to work with the Federation than continue to brand it as the problem – which, unfortunately, is too often merely an excuse to mask either the inability or unwillingness to do the difficult work of understanding the real problems, vetting and identifying the best solutions, and then implementing them.

At all levels of government, we as a society are plagued by elected officials and the citizens they represent who seem to think that there are quick and simple solutions to complex and difficult problems. Difficult problems inherently require difficult solutions. The sooner we acknowledge that and begin working with each other, we will be much farther down the road toward true and lasting improvements for MPD than can ever be achieved by simplistic and feckless measures such as Charter Amendments.

Again, thank you all for your work on this difficult problem. Please contact me at any time if you have any additional questions, concerns, or ideas on how the Federation can be a valued partner in making the MPD a better agency for the community and its employees.

Very truly yours,



James P. Michels

cc: Charter Commissioners
Casey Carl

examples of policies that, in other jurisdictions across the country were litigated by police unions, but here resulted in good policies that became the model for other agencies through Minnesota. In addition, there has been a long-standing (although, since Memorial Day, now routinely ignored) practice in which major policy changes are drafted and sent to a wide list of stakeholders for consideration, comment and concurrence before implemented. None of these communication protocols were followed regarding the "warrior training" ban.

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December 31, 2019

Members of the Police-Involved Deadly Force
Encounters Working Group
c/o Office of the Commissioner of Public Safety
445 Minnesota Street
St. Paul, MN 55101-5155

RE: Arbitration Awards Involving the Termination of Law Enforcement Officers

Dear Working Group Members:

I am a labor attorney who represents public employee unions in Minnesota. Of my roughly 30 public sector union clients, about a third are unions representing law enforcement officers. In recent months, I have become concerned about the perception that the "arbitration system is broken" and that law enforcement officers should be excluded from the statute establishing the ability for public employees to seek binding arbitration to resolve disputes over just cause for discipline. My concern is that this perception seems to be at odds with my experience in representing unions and their members in arbitration cases for over 30 years.

As a lawyer, I have always believed that cases should be decided, and public policy should by established, by facts and not by feelings. Accordingly, I undertook the exercise of reviewing all arbitration awards involving the termination of employees that are posted on the Bureau of Mediation Services website.[1] This research showed the following facts regarding arbitration awards involving the termination of employees:

- There were 67 awards involving the termination of a law enforcement officer (LEO). Termination was upheld in 37 cases (55.2%).
- There were 421 awards involving the termination of other classes of employees. Termination was upheld in 223 of those cases (52.9%).
- Of the 67 cases involving LEOs, in 61 cases the basis for termination was misconduct by the officer (the other cases were for substandard performance, physical unfitness for duty and inability to perform the essential functions of the job).
- In the 61 misconduct cases, termination was upheld in 34 (55.7%).

[1] The website is https://mn.gov/bms/arbitration/awards/ and covers arbitration awards reported to BMS during the period from January 1, 2006 through December 9, 2019.

- In the 27 cases where termination was overturned, 20 cases involved errors by management (17 in which the employer failed to prove that misconduct – or in cases involving multiple charges, serious misconduct justifying termination – occurred).

- There were only 7 cases in the 14-year period in which the arbitrator sustained the allegations but determined that termination was too severe.

- Of those seven cases, 6 resulted in reinstatement with no backpay – thereby having the effect of imposing unpaid suspensions ranging from 7 months to 17 months).

- Four of the seven cases involved off-duty conduct.

- **In summary, there were only three cases in 14 years in which an arbitrator sustained the allegations of on-duty misconduct upon which termination was based, but nevertheless determined that termination was too severe.**

Ladies and gentlemen of the Working Group, this data simply does not support the perception that the arbitration system is broken or the premise that LEOs should have lesser rights than other public employees.

The League of Cities has recently asserted in legal briefs that arbitrators should not be allowed to "second guess" police chiefs. This assertion assumes that police chiefs are uniformly infallible and just in their decision making. While I would readily concur that in most cases, police chiefs seeking to terminate an officer are acting in good faith, it is important to note that during the same 14-year period there were just as many cases in which the arbitrator found that the terminations were in bad faith as there were cases in which the arbitrator "second-guessed" the chief as to the appropriate level of discipline. As an example, I enclose for your review the "Analysis, Discussion and Findings" section of Arbitrator Kapsch's award in BMS Case No. 12-PA-0072. If, as is being proposed by some, the LEO in that case had no ability to challenge his termination, he would have been without recourse despite having been subjected to the conduct of the Sheriff which was described by a separate panel of administrative law judges as "contemptable" and by Arbitrator Kapsch as "disgusting."

The system of workplace justice – which is closely akin to our criminal justice system in many respects – requires that all employees, even police officers, have the opportunity to contest discipline before a neutral third-party. Moreover, the integrity of these systems depends on our ability as a society to acknowledge that, just because we sometimes may disagree with the outcome, that alone does not mean that the system is flawed or that it should be abolished.

Sincerely,

James P. Michels

Encl.

IN THE MATTER OF ARBITRATION BETWEEN

CROW WING COUNTY
(Employer)

and

LAW ENFORCEMENT
LABOR SERVICES, INC.
(Union)

DECISION
(Discharge Grievance)
BMS Case No. 12-PA-0072

ARBITRATOR: Mr. Frank E. Kapsch, Jr.

DATE AND PLACE OF HEARING: The hearing took place on January 18 and 19, 2012 at the Crow Wing County Administrative Center located in Brainerd MN.

RECEIPT OF POST-HEARING BRIEFS: Both Parties submitted timely briefs as of March 2nd, 2012.

APPEARANCES

FOR THE EMPLOYER:
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FOR THE UNION:
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JURISDICTION

The Parties stipulated that this Arbitrator has been properly selected and appointed in accordance with the provisions of *Article 6 – Employee Rights Grievance Procedure* of the applicable labor agreement and that he thereby possesses the authorities, responsibilities and duties as set forth therein to hear and resolve this dispute.

Turcote subsequently filed a formal compliant against Dahl with the State of Minnesota. A panel of Administrative Law Judges, who heard the case, subsequently, albeit reluctantly, found that Dahl had not violated the law; but did find his personal behavior in the matter "*contemptible*".

Interestingly, in about March 2011, Turcote was removed from his Investigator position and transferred back to Patrol Division.

In a related situation, another Department Investigator, D. J. Downie, published a comment in the Brainerd Dispatch on October 24, 2010, in the Open Forum section:

> "*Dahl and the union, the deputies union complained they went to the Sheriff in 2007 with complaints about the management. This was the same management who his opponent put in place, and kept his opponent fro sinking while sheriff. Who do you want as your sheriff, the union or Sheriff Dahl. D. J. Downie, Crow Wing County sheriff's investigator."*

This apparent violation of County policy and/or Minnesota statute was brought to the attention of County officials, but there is no indication that any subsequent action was taken, even though the County Administrator had warned all County employees that such conduct could result in suspension or termination.

In view of the foregoing and based on Sheriff Dahl's pattern of overt political favoritism toward his employees, the record strongly indicates that Dahl's decision to terminate Mr. XXXX was motivated, at least in part, by political considerations by Dahl.

Conclusion: The termination of XX XXXX's employment was entirely without just cause and, therefore, violated the terms of the applicable Collective Bargaining Agreement. The termination should be reversed and Mr. XXXX should be reinstated and made whole in all respects.

ANALYSIS, DISCUSSION AND FINDINGS

As an Arbitrator, I am keenly aware that discharge cases are among the most important situations that I am called upon to determine. Discharge decisions have significant psychological, economic and legal effects on all parties involved.

This labor agreement conditions Discipline/Discharge upon "Just Cause" and like most labor agreements, contains no other statements, standards or definitions as to the precise meaning of that term.

Despite of the absence of a definition of "just cause" within the labor agreement itself, one would expect that - given the myriad of discipline and discharge cases that labor arbitrators have had to deal with over the course of many decades - the labor arbitrators themselves would have certainly reached a clear consensus as to the meaning of those terms. Wrong! The situation was aptly explained by one seasoned, veteran labor arbitrator who observed that neither he nor his esteemed colleagues have ever been able to reach agreement on an universally accepted definition of the term "just cause", but he noted that he and every other labor arbitrator could readily recognize the presence or absence of "just cause" in any particular case.

As the Union has indicated above, in the absence of a cogent definition of "Just Cause" in the applicable labor agreement, I typically look to Daugherty's Seven Tests of Just Cause and the standards set forth by Abrams and Nolan in their article, "*Toward a Theory of Just Cause in Employee Discipline Cases*". I, personally, find both of these perspectives to be useful tools in organizing and analyzing the facts and evidence that come to the fore in discipline/discharge cases. However, like many arbitrators, I find that it isn't helpful or appropriate to apply either of those tools in a rigid and overly mechanical manner; in that neither of them fully recognizes and allows for the weighing of the myriad of factors and nuances that are involved in a typical discipline situation.

In this and other discipline cases, the employer is initially required to present sufficient evidence to establish a *prima facie* case[4] in support of its assertion that the disciplinary action was, indeed, for "just cause". However, to ultimately prevail, the Employer's *prima facie* case must be able to withstand all attempts at rebuttal or challenge and clearly establish by a preponderance of the evidence[5] that it remains valid.

Turning now to this matter, after reviewing and considering the record testimony and evidence as a whole, several preliminary considerations and findings are appropriate;

1. The Employer has properly adopted and promulgated certain policies and work rules to employees outlining the conduct and performance standards expected of them in connection with their employment, including Policy 100.6 governing Co-Worker Relations. On its face, the policy is reasonably related to the Employer's desire to maintain proper and respectful relations between and among employees, supervisors and managers and to insure the good order and efficiency of the organization. Accordingly, I so find.

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[4] In common law, *prima facie* denotes evidence that – unless rebutted – is sufficient to prove a particular proposition or fact.

[5] The preponderance of evidence standard requires sufficient evidence to establish that it is more likely than not that the facts a party seeks to prove are true. This is a less severe evidentiary standard than the "beyond a reasonable doubt" standard applied to criminal matters.

2. Mr. XXXX, at all times material herein, was aware of and familiar with the Employer's Policy 100.6 *Co-Worker Relations* and the referenced subsections 6-3 and 6-5 and was concurrently aware that violation of the policy could result in disciplinary action. Accordingly, I so find.
3. The Employer did conduct a investigation with respect to Lt. Lasher's Complaint of March 22, 2011 against Deputy XXXX with respect to what is known as the "file cabinet" situation. I specifically noted that Lt. David Larson was assigned to conduct the formal investigation and that he personally interviewed and took a statement from Sgt, Galles on March 24, 2011 and a similar interview and statement from Mr. XXXX (with Union representation present) on April 5, 2011.
   I note that there is no record of Lt. Larson having interviewed and taken a statement from Lt. Dennis Lasher, the Complainant, and one of the principals directly involved in the underlying events. However, I concede that, at best, this is a "nice to know"-type item and should not be construed as a critical deficiency. Accordingly, I find that the Employer did conduct an adequate, fair and objective investigation, before determining what, if any action, should be taken.
4. With some reservation, at this point, I acknowledge that, in its evidentiary presentation, the Employer has made a *prima facie* case that Mr. XXXX arguably violated Policy 100.6, as alleged. However, the Union is obviously challenging this.
5. Based on the record evidence, it does not appear that Mr. XXXX was afforded equal treatment, relative to other employees, with respect to the file cabinet situation. This Item will be discussed more fully below.
6. Penalty. Obviously, this item is one of the core issues in this grievance Dispute and is being challenged by the Union and will be more fully discussed below.

Now let's turn to and consider the Union's specific arguments and challenges, set forth in the Summary, above;

1. Mr. XXXX did not commit the policy violations as alleged by the Employer. The Union's major point here is that in her specific statement of charges to Mr. XXXX on April 7, 2011, Chief Deputy Backdahl stated that he "failed" to comply with directives from Lt. Lasher and Sgt. Galles to remove his file cabinet from the squad room. The Union notes that, in fact, XXXX never failed or refused to remove his file cabinet and, in fact, fully complied with the deadlines imposed. Upon review, I find merit in the Union's argument.

   A. A detailed examination and review of the entire "file cabinet" chronology reveals the following facts:
      As Lt. Lasher conceded in his email to XXXX on February 21, 2011, he was having a hard time keeping track of his emails concerning his plans for the remodeled squad room and that no decision had

yet been reached on whether the personal filing cabinets would be going back in the Squad Room.

On March 2, Lasher , by email, informs the deputies that due to space constraints their personal filing cabinets would not be going back into the new squad room and that they should remove their personal filing cabinets "…*from the building ASAP*". One can reasonably presume that upon receipt of this message, the deputies immediately get ready to start reorganizing and transferring the contents from their personal filing cabinets to new locations.

On March 3, Lasher sends an email to all the deputies confirming that the squad room renovation is complete ad they can start moving into their new work stations. He confirms that the personal file cabinets won't be coming back into the new squad room, but that efforts are being made to provide additional filing space for those needing it.

On March 9, Lasher sends another email to the clerical staff and deputies advising them that any items in the hallways must either be moved to their work stations or removed from the Law Enforcement Center building by Friday, March 18. Lasher also stated that, "*Deputies – if you drew one of the work stations that has only one big drawer, you can take one drawer of one of the file cabinets by the kitchen area. You may have to wait until deputies remove their items from those cabinets, which also needs to be done by March 18th*".

Lt. Lasher, as head of the Patrol Division, was well aware that Mr. XXXX was on vacation from about February 23 and wasn't scheduled to return to work until March 15. He was also aware, that Mr. XXXX happened to come into the office, on his own time, on March 13 and was only then aware of Laser's emails of March 2, 3 and 9. Unlike his colleagues, who had been working since about March 2nd or 3rd on the transfer of their belongings and files into their new work stations, on March 13 XXXX was facing the same deadline of March 18.

When Lt. Lasher discovered on Monday, March 14, that XXXX had moved his personal file cabinet back into the squad room; one wonders what, exactly, caused him become upset and to send the message to Sgt. Galles that XXXX had to remove his file cabinet from the squad room not by Friday, March 18, but by March 15, as soon as he reported back to work.

In view of the foregoing and totality of circumstances, I find that Lt. Lasher failed to clearly communicate to XXXX, or other deputies, his expectations regarding exact timelines and manner in which they were to accomplish the transfer of their belongings and files into their new work stations in the squad room. Additionally, Lasher failed to recognize and account for the fact that XXXX had been on vacation from at least March 3 through March 15; when the other deputies had the opportunity to begin moving their belongings and files. Instead, on March 14 and through Sgt, Galles on March 15, Lasher imposed a stricter deadline on XXXX. I also note that Lt. Lasher did engage in a conversation with XXXX during the training session on March 15, but, for some reason, chose not to mention his concern about the filing cabinet situation. I am reasonably certain, based on the totality of the circumstances, that if he had done so, the rest of the scenario would never have unfolded.

By his confusing, arbitrary and capricious communications and conduct, Lasher, needlessly turned a simple "housekeeping" situation into a "cause celebre". Accordingly, I find that Lt, Lasher's actions, conduct and/or lack thereof constituted at least disparate, if not also discriminatory, treatment of Mr. XXXX, with respect to the file cabinet situation.

I further find that by disparately imposing the stricter deadline upon Mr. XXXX for movement of his belongings and files from is personal file cabinet to his work station, Lasher, by specific intent or otherwise, unduly, unreasonably and provocatively stressed XXXX, causing him to "vent" his frustration to Galles on March 15.

B. Turning to the Employer's contention that Mr. XXXX violated Policy 100.6 *et. seq*., I note and find as follows:

1. A review of XXXX's previous PIP finds that Department management required him to bring "…*matters of disagreement directly to your supervisor, a member of the Sheriff's management team or your duly elected bargaining representative*". The apparent purpose of this requirement was to keep XXXX from publicly and openly expressing such disagreements, thereby causing disruptions among potentially wider audiences within the Department.
2. I also note that in XXXX's Annual Performance Appraisal for 2010, Sgt. Galles mentions the fact that XXXX should not address his frustrations to his co-workers, but should utilize him (Galles) to talk about his "*annoyances and frustrations*" so that messages are not ill-received [by others?].

3. Based upon 1 and 2, above, and in light of XXXX's testimony to the effect that the Employer had not previously expressed any objection or concern with him privately "venting" his disagreements, annoyances and/or frustrations to his immediate supervisor, I find that his comments to Galles on March 15 about his frustrations with the Lasher and the file cabinet situation are insufficient to establish or constitute a violation of Employer Policy 100.6, as alleged. See also my comment and finding in the last paragraph of A, above.

2. The Union argues that the penalty of Termination/Discharge is too severe. The Union specifically argues that even if one fully acknowledges all the Employer's alleged facts directly surrounding the file cabinet situation; there would be insufficient grounds to support a termination decision.

I note that Employer, in its brief, does concede that 'standing alone" the facts of the file cabinet situation would not justify the termination, but the Employer argues that when XXXX's entire work performance and disciplinary record is considered, then termination is, indeed, appropriate and justified. With respect to the contention that XXXX's previous disciplinary record is relevant to the discharge decision; the Union points to the following:

A. XXXX's last and most recent formal disciplinary action occurred in about March, 2007. At that time he received a 30-day disciplinary suspension for placing the sheet of paper containing a vulgar cartoon and language on a citizen's vehicle. The Union also notes that the subsequent PIP that was imposed on XXXX from 2007 until October 5, 2009, under the terms of the applicable labor agreement is not to be construed as disciplinary action, only as counseling or coaching.
B. Since the lifting of the PIP in October, 2009, XXXX has consistently met and, in most cases, exceeded the Employer's work performance expectations and standards, as set forth in his Performance Appraisals for 2009 and 2010. As stated by his supervisor, Sgt. Paulson, in the 2009 Appraisal, "*XXXX, through this plan, has made a 180 degree turn in the right direction*".
C. Given the totality of the circumstances surrounding the "file cabinet" situation, there is nothing to support the Employer's contention that XXXX's behavior and actions in that situation that demonstrate any kind of continuing, repetitious problem.

In consideration of the foregoing, I find merit in the Union's argument and further find that in light of XXXX's obvious marked change in attitude and performance over the course of the past 2-3 years, his past disciplinary record is unrelated to his behavior – even assuming *arguendo* that it somehow violated Policy 100.6 - in the file cabinet situation.

3. The Union argues that Mr. XXXX's termination was motivated by political retaliation by Sheriff Dahl. In support of this argument, the Union entered into the record copies of two (2) separate recorded conversations. I have reviewed both recordings. In summary;

   The first conversation took place in about June, 2010 and involved a phone conversation between Sheriff Dahl and Deputy XXXX. Dahl was then campaigning for re-election to another term as Sheriff in the November election. Dahl called XXXX because he had apparently obtained some evidence that XXXX's wife was supporting Dahl's election opponent. In the ensuing conversation; in which Dahl's conduct can best be described as "*disgusting*", Dahl essentially demands that XXXX clearly state his political allegiance to Dahl. When XXXX refuses to make any such political admission or declaration, Dahl proceeds to accuse him of "*disloyalty*" and says he won't be able to trust him and that will affect his employment status because, without loyalty and trust, Dahl just didn't know what he was going to do with respect to XXXX's position as an employee in the Department. The entire conversation went on for approximately 25 minutes with Dahl doing virtually all the talking and stating over and over again his personal "*hurt*" and disappointment over XXXX's disloyalty and lack of allegiance.

   The second recording contains the content of a meeting that took place in Dahl's office in early August, 2010 and lasted for about 44 minutes. Dahl summoned Chad Turcote, a Deputy-Investigator with the Department, into his office because he had discovered that Turcote had posted a recent photo of his children, on his personal FaceBook page, depicting them standing by a campaign sign for Dahl's election opponent and allegedly giving it a "thumb's up" gesture. As in his previous conversation with XXXX, Dahl accused Turcote of being disloyal, stated that he could no longer trust him and that the situation raised serious questions about Turcote's future employment with the Department. During the conversation, XXXX's name was mentioned as another disloyal employee.

   Turcote subsequently filed a formal complaint against Dahl with the State of Minnesota. A formal hearing subsequently took place before a panel of three State Administrative Law Judges (ALJs). The panel ultimately concluded that while they were technically unable to find that Dahl's statements and conduct violated the law, they nonetheless found his statements to Turcote, in the August, 2010 meeting, to be "*contemptible*". Having reviewed the recording myself, I would add the word "*disgusting*".

   I note that the record shows no evidence that Sheriff Dahl has subsequently retracted, corrected or otherwise remedied his previous statements to XXXX or Turcote with respect to their alleged lack of political allegiance, credibility and disloyalty and how such apparent treason would have a potentially

adverse effect on their employment with the him and the Department. Accordingly, I shall presume an adverse inference that Sheriff Dahl has, at all times material herein, maintained those stated attitudes and intentions and that he specifically bears ongoing personal animus and hostility toward Mr. XXXX because he refused to pledge his political allegiance to Dahl, when demanded.

With that adverse inference, I find that it is reasonable to conclude that Dahl's personal animus and hostility toward XXXX did impact, by some measure, on his personal ability to make a fair and unbiased decision with respect to any considered disciplinary action involving XXXX.

I'm sure that as it reads the above statement, the Employer will be tempted to point out that Sheriff Dahl consulted with 6-8 members of his management team, before making the final decision to terminate XXXX. According to the testimony, of some 6-8 managers/supervisors who participated in that consultation, only one disagreed with a decision to terminate. Frankly, I find that consultation and its results to be irrelevant, for a couple of reasons, 1) the individuals involved were all functioning as Dahl's management agents, representatives and minions and 2) I have no doubt that they, like XXXX and Turcote, were well aware of their boss's views and attitudes toward those who are "disloyal".

In consideration of the record testimony and evidence as a whole and my specific findings as set forth above, I specifically find that the Employer has failed to meet its burden of proof and establish by a preponderance of the evidence that it had Just Cause to terminate the employment of Deputy XX XXXX on April 13, 2011.

As an arbitrator, I don't lightly overturn employer disciplinary actions; nor is it my practice to inject myself and my personal standards of fairness or justice into an employer's disciplinary decision. Where the employer has obviously made an honest and good faith effort to afford the employee full industrial due process and consideration and where the employer has clearly exercised its discretion in a fair, reasoned and non-discriminatory manner, I will typically defer to that decision, if it otherwise fully comports with the contractual requirements. On the other hand, I will not hesitate to fully intervene where the evidence clearly establishes that the employer has acted in an arbitrary and capricious manner or has otherwise acted in bad faith and abused its discretion, in violation of its obligations under the contract.

CONCLUSION

In view of my analysis, discussion and findings above, I conclude that by terminating Deputy XXXX on April 13, 2011, in the absence of Just Cause, the Employer specifically violated Article 14.5 of the applicable labor agreement.

DECISION

Having concluded that the Employer violated the applicable labor agreement, as alleged by the Union in its Grievance of April 18, 2011, that grievance is hereby sustained.

THE REMEDY (Revised) [6]

The Employer **SHALL** take the following affirmative steps and actions to remedy its contractual violation**:**

- Within seven (7) business days of this Decision, offer, in writing, Mr. XXXX immediate, full and complete reinstatement to his former position as a Patrol Deputy and as a K9 Handler.[7]
- Reinstate Mr. XXXX with no loss of seniority or any other rights and benefits to which he is entitled by virtue of his ongoing service with the Employer.
- Make Mr. XXXX whole for any loss of wages or benefits which he has suffered as a result of his improper termination. [8]
- The Employer's actions did not result in a disciplinary action within the meaning of the *Minnesota Government Data Practices Act* (MGDPA), MN Stat. § 13, and the Employer will treat all references to Mr. XXXX's termination on April 13, 2011 as "*private personnel data*" within the meaning of the MGDPA.

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[6] The Remedy has been amended, as of 4/19/12, from the original, per post-Decision stipulations by the Parties.

[7] In his capacity as a K9 Handler, Mr. XXXX's former canine partner, "Oakley", will be immediately placed back in his custody or, if "Oakley" is no longer available for duty with XXXX, a new canine partner will be immediately furnished to him.

[8] Any income earned from interim employment, together with any amounts of unemployment compensation received since his termination, shall be deducted from the gross amount of back pay due.

Dated at Minneapolis, Minnesota, this 2nd day of April, 2012.

Frank E. Kapsch, Jr.
Arbitrator

Note: I shall retain jurisdiction in this matter for a period of 45 calendar days from the issuance of this Decision to address any questions or problems related thereto.

Statistical Analysis of Arbitration Awards in Police Termination Cases (2006-2019)

JAMES P. MICHELS

RICE, MICHELS & WALTHER, LLP

Public Employment Labor Relations Act

- PELRA requires that all Collective Bargaining Agreements covering public employees provide for "compulsory binding arbitration of grievances including all written disciplinary actions." Minn. Stat. § 179A.20, subd. 4.

- The League of Cities, the Minnesota Chiefs of Police Association, the StarTribune and some members of this Work Group have asserted that PELRA should be amended to exclude law enforcement officers from this fundamental right of due process for public employees on the premise that "the arbitration system is broken."

Is the Grievance/Arbitration System Broken? Perception vs. Reality

- This document provides an analysis of all arbitration awards involving the termination of a law enforcement officer as reported on the Bureau of Mediation Services website.*
- The BMS website contains all reported cases for the period from 2006 through December 9, 2019.
- It is important to understand that not all terminations are grieved and not all cases that are grieved are arbitrated.
- Thus, this study does not reflect the actual percentage of instances in which the decision of the Chief Law Enforcement Officer to terminate an LEO results in the termination of the officer. Because only a fraction of terminations are arbitrated, the actual percentage is much higher than the data reflected by the arbitration awards.

*PERLA cases only. Does not include cases brought under the Veteran's Preference Statute.

67 Termination Cases Involving Law Enforcement Officers Were Arbitrated

- During the period from January 1, 2006 through December 9, 2019, there were 67 arbitration awards posted on the BMS website involving the termination of a law enforcement officer.
- During the same period, there were arbitration awards issued and reported on the BMS website in 421 termination cases for all other types of employees.
- Of the 67 cases involving law enforcement officer cases, termination was upheld in 37. (55.2%).
- In the 421 cases involving other types of employees, termination was upheld in 223 (52.9%).
- **CONCLUSION: Arbitrators sustain the termination of law enforcement officers at a higher rate than for other types of employees.**

Grounds for Termination

Grounds for Termination:	Number	Percent
Misconduct	61	91.0%
Substandard Performance	4	6.0%
Fitness for Duty	1	1.5%
Unable to Perform Essential Duties	1	1.5%
Total	**67**	

Reasons Termination Overturned

Termination Overturned:	**Number**	**Percent**
No Misconduct Occurred	4	13.3%
Multiple Charges - Serious Charges Not Proved	13	43.3%
Procedural Grounds - Double Jeopardy	1	3.3%
Procedural Grounds - Investigation Flawed	2	6.7%
Termination Too Severe for Conduct	*7*	*23.3%*
Fitness for Duty - Not Proved	1	3.3%
Termination Too Severe for Perf. Problem	2	6.7%
Total	**30**	

No Termination ≠ No Discipline

Discipline When Termination Overturned:	Number	Percent
Suspension: 6 months or more	8	26.7%
Suspension: 3 to 6 months	0	0.0%
Suspension: 1 to 3 months	2	6.7%
Suspension: 10 to 30 days	3	10.0%
Suspension: Less than 10 days	8	26.7%
Demotion	2	6.7%
No discipline	7	23.3%
Total	**30**	

Termination Data for Misconduct Cases

Misconduct Cases:	**Number**	**Percent**
Termination Upheld	34	55.7%
Termination Overturned	27	44.3%
Total	**61**	

Misconduct Cases: Reasons Termination Overturned

Misconduct - Termination Overturned:	**Number**	**Percent**
No Misconduct Occurred	4	14.8%
Multiple Charges - Serious Charges Not Proved	13	48.1%
Termination Too Severe for Conduct	*7*	*25.9%*
Procedural Grounds - Double Jeopardy	1	3.7%
Procedural Grounds – Investigation Flawed	2	7.4%
Total	**27**	

Misconduct Cases: Summary

Misconduct Cases:	**Number**	**Percent**
Termination Upheld	34	55.7%
Management Failure (Insuff. Proof/Invest. Flaw)	20	32.8%
Discipline Imposed (15)		
No Discipline (5)		
Termination Too Severe	*7*	*11.5%*
Total	**61**	

Cases Where Arbitrator Sustains Charges but Sets Different Discipline

Charge	# of Cases	> 6 Mos	3-6 Mos	1-3 Mos	10-30 Days	< 10 Days	Dem.	None
Excessive Force	2	1			1			
Off-duty Conduct	4	4						
Alcohol Related (3)								
Disorderly Conduct (1)								
Untruthfulness	1	1						
Total	**7**	**6**			**1**			

CONCLUSION

- In 14 years, there have been **only three cases** involving serious on-duty misconduct (excessive force and untruthfulness) in which the arbitrator sustained the charges upon which termination was based but imposed lesser discipline.
- In those cases, the discipline was:
  - Excessive force: 13 month suspension (roughly $80,000 penalty on officer)
  - Untruthfulness: 17 month suspension (in excess of $81,000 penalty on officer)
  - Excessive force: 30 days suspension (based on penalties imposed by agency for similar conduct in numerous other cases). NOTE: Officer recently convicted on criminal charges and will lose POST license.
- **Three cases in 14 years (two of which imposed an extremely harsh penalty against the officer) does not support the perception that the arbitration system is broken or the supposition that peace officers should have lesser rights than other public employees.**

Labor Arbitration and Police Discipline: Misperceptions and Reforms

By Alan A. Symonette, Arbitrator[1]

Normally papers or articles on this subject begin with a story of a police officer who has been accused of committing a criminal offense or of using excessive force to the point of causing bodily injury or death. The officer is criminally indicted and acquitted of wrongdoing, usually at the preliminary hearing or before. On some occasions the municipality has had to settle with the victimized family for a large sum of taxpayer money. The acquitted officer then seeks reinstatement to the police force and is represented in this effort by his or her union. The matter goes to arbitration and some months later the officer is reinstated with or without back pay. Understandably, the community and the media are outraged. This normally results in a series of articles in local and national newspapers about the lack of accountability in law enforcement and the role collective bargaining and arbitration outcomes and arbitrators themselves play in enabling police to act with impunity. This scenario has been chronicled for decades. The current landscape that has highlighted the recent killings of unarmed African Americans like George Floyd, Brianna Taylor, and others.

One of the most recent comments appeared in an editorial in the October 3, 2020 New York Times entitled "To Hold Police Accountable, Ax the Arbitrators.[2]" In the article, the Times referred to arbitrators as an "entrenched barrier to reform" who "routinely reinstate abusive officers who have been fired for misconduct." Even though mayors and police chiefs

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[1] Alan Symonette has been a full-time arbitrator since 1988 and has heard cases in a variety of industries including law enforcement. He is a member of the National Academy of Arbitrators and a former Vice President. He is currently the Vice President of the College of Labor and Employment Lawyers.

[2] https://www.nytimes.com/2020/10/03/opinion/sunday/police-arbitration-reform-unions.html?searchResultPosition=1

have engaged in efforts to reform policing and make it accountable. They face "orders from unelected arbitrators [who] give those abusive officers their badges and guns back." Citing a study by Stephen Rushin of the Loyola University of Chicago, arbitrators forced departments to rehire officers in 46 percent of 624 arbitration awards with back pay.

The Times noted that arbitration often employs a standard practice to defend employees who have been treated more harshly than other officer who had committed similar offenses in the past. The editorial board noted that arbitrators employ the seven tests of just cause which they refer to "Daugherty's tests as 'the gold standard of fairness." The Times admitted that evidence of disparate treatment was a concept which protected Black officers from being singled out for doing the same things that white officers did. But today, this concept has become the root of impunity."

The editorial also noted that it is difficult to curb the power of arbitrators because some states "have labor laws that guarantee arbitration to public service employees. Others have a Law Enforcement Officers Bill of Rights that guarantees a right to arbitration if an officer chooses it." The article described the efforts of certain states to change the power of arbitrators and in one instance "making them more accountable to democratically elected officials and the community." In conclusion the Times editorial board stated that officers should still have the right to argue their cases before a "neutral body, but the ultimate decision to terminate [should be} left in the hands of the city manager, who is accountable to the community. That's where it belongs."

Dan Nielson, the current President of the National Academy of Arbitrators wrote a letter in response to the editorial noting that the editorial was "rife with mistakes and misinformation." He noted that Rushin's article had previously set the figure of reinstated officers at 24 percent,

not 46 percent. The former statistic was consistent with a citation to a similar article in the Washington Post and other academic studies. Rather, Departments prevail over three quarters of the time and according to Professor Rushin, the Department loses because "they failed to prove any misconduct."

Arbitrator Nielson concluded his letter by noting that the editorial "fundamentally misstates what arbitrators do and how they come to do it. Arbitrators are *mutually* selected by the public employer and the union to hear the case in accordance with the contract those parties have *negotiated*." [Emphasis mine.] The parties can accomplish a number of reforms to the standards expected of police officers and discipline for violating those standards. Arbitrators will adhere to and enforce them. Arbitrators apply the contract they are given. These "are questions of public policy and they should be addressed by the political process. They cannot and should not be addressed by a grievance arbitrator."

After reading the published editorial which was of course published and the rebuttal letter which was not, I felt a sense of sadness in that during this important time when there are frank and difficult discussions on police brutality and institutional racism and debates raised with respect to accountable policing, we are again engaging in the fruitless discourse surrounding the fundamental misunderstanding of the basic elements of public sector collective bargaining and labor arbitration. The Times should know better. Nevertheless, in these times when communities are searching for ways of reforming their law enforcement departments, it is not sufficient for arbitrators to simply stand back and say "you just don't understand" to critics to the role of collective bargaining when in their view it works against accountability and social justice. Arbitrators do play a role even though they are only construing terms and conditions of employment established by legislatures and the parties themselves.

The purpose of this paper is to provide an institutional overview of the legislative and judicial foundation for police discipline followed by the standards currently applied by arbitrators in hearing appeals of discipline. Finally, I will offer some specific proposals that should serve as a basis for continuing discussion over the reform of officer discipline. Ultimately however, any reform rests with the institutions ultimately responsible for the determination of working conditions within each jurisdiction; the legislatures, the municipal entities, and the unions themselves.

1. The Institutional Foundations of Police Discipline.

Before we begin to discuss the standards that an arbitrator may apply in considering the appropriateness of the discipline of a police officer. One must understand that any discipline, regardless of whether it ends in arbitration or other review, it must be consistent with the due process requirements mandated by the U.S. Supreme Court, provisions adopted by state legislatures securing officers' rights and privileges, and with the negotiated terms and conditions of the collective bargaining agreement. All these considerations must be applied to questions of officer accountability. The review of police discipline is based upon several standards that have been applied in public sector labor relations and collective bargaining for over 50 years.

a. Due Process Foundations

Police officers, like other civil servants have a property right to their employment and those rights cannot be removed without due process. In Garrity v. New Jersey[3] police officers in certain New Jersey boroughs were questioned during the course of a state investigation concerning alleged traffic ticket "fixing." Each officer was first warned that anything he said

[3] 385 U.S. 493 (1967)

might be used against him in the criminal proceeding; the officer could refuse to answer but if he refused, he would be subject to termination of his position. Eventually the officers' answers were used in subsequent prosecutions which resulted in their convictions. The Supreme Court held that to compel these statements were a violation of the Fifth and Fourteenth Amendments. In writing for the majority Justice Douglas stated that:

> "The privilege against self-incrimination would be reduced to a hollow mockery if its exercise could be taken as equivalent either to a confession of guilt or a conclusive presumption of perjury. ***The privilege serves to protect the innocent who otherwise might be ensnared by ambiguous circumstances."[4]

Accordingly, police officers, like teachers and lawyers are not relegated a watered-down version of constitutional rights.

This right to due process should be considered in conjunction with the findings of the Supreme Court in Cleveland Board of Education v. Loudermill.[5] In that case the Court held that certain public sector employees have a property interest in their employment. This right entails a right to "some kind of hearing" before being removed from their position. This includes the right to oral or written notice of the charges against them, an explanation of the employer's evidence and an opportunity to respond to those charges. Accordingly, regardless of whether the police officer is represented by a union which may have separate procedural rights and protections, as a civil servant the officer may not be removed from his or her position without certain procedural requirements.

b. The Police Officer Bill of Rights

Officers have additional protections when subject to discipline than those provided to other civil servants. Some of the elements constituting the most important protections are found

[4] *Id* at 557 – 558.
[5] 470 U.S. 532 (1985)

in the Law Enforcement Officers' Bill of Rights (LEOBR). The LEOBR is intended to protect law enforcement personnel from investigation and prosecution arising from conduct during the official performance of their duties. These rights are detailed as follows:

- Law enforcement officers, except when on duty or acting in an official capacity, have the right to engage in political activity or run for elective office.
- Law enforcement officers shall, if disciplinary action is expected, be notified of the investigation, the nature of the alleged violation, and be notified of the outcome of the investigation and the recommendations made to superiors by the investigators.
- Questioning of a law enforcement officer should be conducted for a reasonable length of time and preferably while the officer is on duty unless exigent circumstances apply.
- Questioning of the law enforcement officer should take place at the offices of those conducting the investigation or at the place where the officer reports to work, unless the officer consents to another location.
- Law enforcement officers will be questioned by a single investigator, and he or she shall be informed of the name, rank, and command of the officer conducting the investigation.
- Law enforcement officers under investigation are entitled to have counsel or any other individual of their choice present at the interrogation.
- Law enforcement officers cannot be threatened, harassed, or promised rewards to induce the answering of any question.
- Law enforcement officers are entitled to a hearing, with notification in advance of the date, access to transcripts, and other relevant documents and evidence generated by the hearing and to representation by counsel or another non-attorney representative at the hearing.
- Law enforcement officers shall have the opportunity to comment in writing on any adverse materials placed in his or her personnel file.
- Law enforcement officers cannot be subject to retaliation for the exercise of these or any other rights under Federal, or State law.

Some or all these provisions have been codified in the laws of sixteen states.[6] According to Professor Stephen Rushin, Assistant Professor, at the University of Alabama School of Law, police have argued that such procedures are necessary because police must be granted the widest latitude to exercise their discretion in handling difficult and often dangerous situation, and should

[6] https://en.wikipedia.org/wiki/Law_Enforcement_Officers%27_Bill_of_Rights

not be second-guessed if a decision appears in retrospect to have been incorrect.[7] Unions have also argued that these protections are necessary to avoid the arbitrary and sometimes political decisions of municipalities. In addition, these provisions have appeared in the Collective Bargaining Agreements in several cities including several in states that have not enacted the Law Enforcement Officer's Bill of Rights.

c. Collective Bargaining and the Negotiation of Police Discipline.

Currently around two-thirds of police officers in the U.S. are members of a labor union and are subject to collective bargaining agreements. These unions received broad, bipartisan support – even from conservative politicians who have fought against unionization privileges for other government employees. Only four states, Georgia, North Carolina, South Carolina, and Virginia generally prohibit police departments from collectively bargaining. Forty-one states have statutes that give local police departments the right to bargain collectively with police unions about salaries, benefits, and other terms of employment.[8]

The question surrounding the negotiation over police discipline has been subject to several interpretations as "conditions of employment". In some instances, collective bargaining statutes, courts and state labor relations boards have held that certain management rights should not be subject to negotiation as conditions of employment. However only a few courts have examined whether disciplinary procedures in police departments are considered "conditions of employment, "thereby making them subject to collective bargaining." A number of these courts have held that police discipline is an appropriate subject of collective bargaining. Others have found exceptions for certain areas of discipline.[9]

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[7] *Police Union Contracts* 66 Duke Law Journal 1191 at 1211 (2017)
[8] *Id.* At 1204.
[9] *Id.* At 1206 and attached footnotes.

Critics often find that the combination of legislation and provisions negotiated through the collective bargaining process have blocked the accountability for police actions. This criticism has been raised in six major areas:

1. Disqualifying misconduct complaints that are submitted too many days after an incident occurs or if an investigation takes too long to complete.

2. Preventing police officers from being interrogated immediately after being involved in an incident or otherwise restricting how, when, or where they can be interrogated.

3. Giving officers access to information that civilians do not get prior to being interrogated.

4. Requiring cities to pay costs related to police misconduct by giving officers paid leave while under investigation, paying legal fees, and/or the cost of settlements.

5. Preventing information on past misconduct investigations from being recorded or retained in an officer's personnel file.

6. Limiting disciplinary consequences for officers or limiting the capacity of civilian oversight structures and/or the media to hold police accountable.[10]

In one law review article it has been argued that conferring similar collective bargaining rights on sheriffs' deputies in Florida is associated with an approximately 45% increase in violent incidents.[11] This analysis has been severely questioned by Professors Martin Malin and Joseph Slater of the Chicago-Kent College of Law, Illinois Institute of Technology and University of Toledo College of Law respectively. They claim that the 45% increase was not statistically significant given the number of deputy sheriffs and the overall number of incidents. They concluded that with collective bargaining rights, one additional deputy sheriff in an average

[10] *Campaign Zero* – www.checkthepolice.org.

[11] "Collective Bargaining Rights and Police Misconduct: Evidence from Florida," 38 Journal of Law, Economics and Organization ___ (2022) (forthcoming) Dhmmika Dharmapala, John Rappaport & Richard H. McAdams

office of 290 deputies would be involved in a violent incident every five years.[12] Such an outcome is not as stark as described.

In sum, before we begin to discuss the standards an arbitrator may apply to the discipline of a police officer, he or she must reach a determination consistent with the due process provisions

2. The Role of the Arbitrator and Standards Applied in Matters Involving Police Discipline

The discipline of police officers usually begins with an internal investigation conducted by the department's internal affairs division. That division may also include officers who are also members of the bargaining unit. If the investigation concludes that charges are warranted, the charges are provided to the officer who may come before a review board consisting of other officers. At each step, the officer is represented by a representative from the union. The makeup of the board depends on the municipality or state. They may include fellow officers or in some instances, civilians. If the charges remain founded by the board, only then is a grievance filed under the collective bargaining agreement. If the grievance is not resolved, it is submitted to arbitration. The arbitrator is mutually selected by the municipality and the union either from a rotating "permanent" panel or from agencies that provide panels like the American Arbitration Association or the state Public Employee Relations Board. These arbitrators are vetted by both parties through biographies submitted by the agencies or through research by the parties themselves.

Arbitrators who are members of the National Academy of Arbitrators or are selected through agencies like the American Arbitration Association are subject to the Code of

[12] "In defense of police collective bargaining: Unions and arbitrators do not make it impossible to fire bad cops, Chicago Sun Times, August 12, 2020, https://chicago.suntimes.com/2020/8/12/21365763/chicago-police-fop-collective-bargaining-rights.

Professional Responsibility for Arbitrators of Labor-Management Disputes.[13] Certain provisions of the Code are relevant in arbitrations involving police discipline. Paragraph 2 A provides "An arbitrator should conscientiously endeavor to understand and observe, to the extent consistent with professional responsibility, the significant principles governing each arbitration system in which the arbitrator serves." The arbitrator must decide the case in a manner consistent with the provisions negotiated by the municipality and the union. If the parties agree to include or exclude certain evidence in discipline, the arbitrator must abide by those standards. If an agency must follow statutory law or provision of the Agreement in the investigation of police misconduct, the arbitrator is obligated to make sure that the investigation is compliant with that standard. The failure to follow such legislated or negotiated rules may result in the finding of a violation of the agreement and the reinstatement of the officer.

Another critical aspect of arbitration in police cases involves Paragraph 2 C regarding Privacy of Arbitrations. The Code requires:

> "All significant aspects of an arbitration proceeding must be treated by the arbitrator as confidential unless this requirement is waived by both parties or disclosure is required or permitted by law
>
> a. Attendance at hearings by persons not representing the parties or invited by either or both of them should be permitted only when the parties agree or when an applicable law requires or permits. Occasionally, special circumstances may require that an arbitrator rule on such matters as attendance and degree of participation of counsel selected by the grievant.
>
> b. Discussion of a case by an arbitration with persons not involved directly should be limited to situations where advance approval or consent of both parties is obtained or where the identity of the parties and details of the case are sufficiently obscured to eliminate any realistic probability of identification. …

[13] https://naarb.org/code-of-professional-responsibility/

c. It is a violation of professional responsibility for an arbitrator to make public an award without the consent of the parties."

This issue is the source of significant consternation and frustration by media and the broader community. Unless the arbitration hearing is subject to a state open proceedings or records law, the arbitration proceeding itself is private. The evidence heard is private. The decision and its reasoning are also private. The arbitrator is forbidden to comment on an award. Unfortunately, the community is only aware of what has happened prior to the department's decision. It is usually not aware of what evidence is presented at the proceeding and in most instances is unaware of the reasoning for the award. Therefore, in many cases, the community and media are forced to comment on processes in the proceeding that due to privacy requirements, it knows nothing about.

At the beginning of the hearing, the arbitrator is given a statement of the question to be decided. Normally that question or issue is stipulated in two sentences; was [the officer] terminated for just cause? If not, what shall the remedy be? The definition of just cause is a term of art.[14] Many of the proponents of greater police accountability point to the application of this standard to the unique responsibilities that accompany police officers. According to those critics, arbitrators who must make these determinations are wedded to what can best be described as the "seven tests" of just cause. These tests are derived from the opinion of Arbitrator Carroll Daugherty in 1964.[15] Many have referred to this standard as the "common law" definition

[14] The concept of just cause draws its origin from the Statute of Laborers enacted in 1562. This statute prohibited employers from discharging employees without a "reasonable cause." While most American jurisdictions initially followed this rule, it was replaced by the employment at-will doctrine in 1877. Just cause resurfaced in the 1930s when unions, concerned about their members' job security, began including just cause provisions in their collective bargaining agreements. Norman Brand and Melissa H. Biren ed., *Discipline and Discharge in Arbitration*, 3rd Edition, Bloomberg BNA (2015), page 2-4, citing Delmendo, "*Determining Just Cause: An Equitable Solution for the Workplace,*" 66 Wash. L. Rev. 831 (1991)

[15] Grief Bros. Cooperage Corp., 42 LA 555 (Daugherty, 1964)

consisting of seven independent questions. If the answer to many of them is "no," then, in Daugherty's view, just cause did not exist for discipline.[16]

Today, 56 years after this was first articulated, some arbitrators still refer to the Seven Tests in their just cause analysis. Many critics focus on the application of these tests as a major roadblock to police accountability. In particular, the proponents of accountability focus on two specific factors. First, they argue that the "non-discrimination" test once used to protect police of Color are used as precedent to excuse wrongdoing by officers based upon instances in which prior police management may have looked the other way. Secondly, even though an arbitrator may have found the officer guilty of the charges, arbitrators have reduced the penalty based upon the employee's prior record or length of service. What is particularly impactful in this determination is that the officer/grievant's record may have been expunged due to negotiated provisions in the collective bargaining agreement or the legislated application of the Law Enforcement Officers Bill of Rights or similar statutes. On the other hand, police unions have noted that officers have been reinstated because departments, in a rush to judgment to satisfy and upset community, have failed to employ appropriate due process.

While there are some arbitrators who have applied the seven tests, many others including this author find that the tests cannot be applied to all circumstances of employment but are applicable based on the expectations and obligations of the relationship. For example, Arbitrators Roger Abrams and Dennis Nolan have explained that just cause for discipline can exist only when an employee fails to meet a fundamental obligation that exists in the employment relationship. They identify employee obligations, legitimate management interests,

[16] The questions are: 1. Was there notice to the employee? 2. Was the rule reasonably related to operations? 3. Was there an investigation prior to imposing discipline? 4. Was the investigation fair? 5. Was there sufficient proof of the wrongdoing? 6. Was the rule applied evenhandedly and without discrimination to all employees? 7. Was the penalty appropriate?

and employee protections applicable to the disciplinary setting must be considered in determining whether just cause exists to terminate.[17]

In other words, there are employee obligations unique to policing that should be considered in accessing police discipline. Officers take an oath to serve and protect the community and at the same time are given the ability to use lethal force in executing that oath. Thus, it would be unreasonable to apply a standard that was derived in the steel industry to this circumstance. Given these conditions, parties have negotiated their own definition of just cause given the obligations of the job, the expectations of management and the community and the negotiated protections.[18]

It is acknowledged that in many circumstances, the application of the standards in the private workplace in 1964 to 21st Century policing is tantamount to "fitting a square into a round hole." However, the power to make these necessary changes rest with the parties through legislation with the involvement of the community or negotiation. Moreover, it is also important that the arbiters of discipline in these circumstances be trained in the unique expectations of both the municipality and the police union regarding officer performance.

It is critical that arbitrators understand the nature of any industry in which they are asked to exercise their judgement. Such training has been provided in other specialized areas in which arbitrators become "certified" to work in an industry. Once complete the arbitrator can certify on their bio that he or she have been trained for consideration and selection by the parties. This has

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[17] See Abrams & Nolan, *"Toward a Theory of 'Just Cause' in Employee Discipline Cases,"* 1985 Duke Law Journal 594 (1985)

[18] For example, an employee in the federal government may only be removed "for the efficiency of the service." In consideration of the removal, management must consider 12 "Douglas Factors". Those factors are 1. The seriousness of the offense, 2. The employee's job, 3. Prior Discipline, 4. Past Work Record, 5. Ability to perform in the future, 6. Consistency of penalty, 7. The table of penalties, 8. Notoriety of Offense, 9. Clarity of Prior Notice, Rehabilitative Potential, 11. Mitigating circumstances, and 12. Alternative sanctions.

occurred in such varying industries as railroads and federal sector arbitration.[19] This I believe is a start at the reformation of the arbitration process as it applies to policing.

3. Proposed Reforms to the Arbitration Process

Recently there has been substantial discussion and consideration of reforms in law enforcement labor relations because of the recent incidents involving police violence on civilians. A good example of that discussion appeared a recent article published by Catherine Fisk, Joseph Grodin, Thelton Henderson, John True, Barry Winograd and Ronald Yank.[20] These individuals are law professors and legal professionals involved in collective bargaining, arbitration, and law enforcement. The proposals are focused on law enforcement officers employed by California counties, cities, and some other political subdivisions. The proposals fall into three categories: transparency in contract negotiation and record keeping, reforms (including greater transparency) in law enforcement disciplinary proceedings, and improved accountability in collective representation of law enforcement officers. I choose to summarize their proposals for consideration.

I. Transparency in Contract Negotiation and Record-Keeping

a. Public Access to Negotiations on Use of Force.

> Propose that the current (California) law be amended to require that, if a public entity chooses to bargain with a union representing law enforcement officers over use of force policy, the public must be notified in advance of the time and place of any such negotiations and have a right to attend. In addition the law should make clear that even if the effects of a use of force policy are a mandatory subject of bargaining, management has a right to implement the policy before or during effects bargaining.

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[19] For example, the author has worked with the Federal Mediation and Conciliation Service in training arbitrators to handle cases in the Federal sector. Once the two-day training is complete, the arbitrator may represent this expertise to the parties for consideration and selection. NAA arbitrators regularly provide such training and other sectors of labor management arbitration.

[20] Catherine Fisk et al., *Reforming Law Enforcement Labor Relations,* Calif. L. Rev. Online (Aug. 2020), http://www.californialawreview.org/reforming-law-enforcement-labor-relations.

b. Transparency for All Law Enforcement Contract Proposals

Before a public entity commences negotiations with law enforcement union, that entity must conduct a public hearing on its bargaining proposals with sufficient notice and opportunity for public comment. After the agreement is negotiated the public entity must conduct a public hearing, with sufficient notice and opportunity for public comment before the agreement is ratified.

c. Transparency of Law Enforcement Disciplinary Records and Decisions

Propose that all disciplinary records and arbitration and civil service decisions involving law enforcement officers be maintained in publicly accessible database subject to disclosure under the (California) Public Records Act. However, to protect those who make complaints against officers or who are victims of misconduct, the name and other private information of complainants will not be disclosed.

II. Procedural Reform of Disciplinary Proceedings[21]

d. Transparency of Law Enforcement Disciplinary Arbitrations and Civil Service Appeals

Propose that, just as a civil or criminal trial is a public proceeding, so too should be disciplinary proceedings against law enforcement officers.

e. Reform the Procedure for Disciplinary Arbitration and Civil Service Appeals.

In this section, the authors propose several changes in the way evidence is used in disciplinary appeals. This includes significant changes in evidence standards, decisions and remedies awarded.

f. Arbitrator Independence and Training

The authors recognize that in cases involving the use of force, arbitrators and hearing officers play a public role in resolving disputes involving officer discipline. Therefore, they propose that arbitrators and hearing officers with appropriate training be assign from list approved by a government agency. In their article they refer to the California Mediation and Conciliation Service. This concept would be applicable to individuals on panels such as the American Arbitration Association as well as respective state Public Employee Relations Boards.

[21] It should be noted here that the authors of the articles recognized that these proposals would necessitate a change in several law enforcement officer collective bargaining agreements in many California jurisdictions as well as the California Peace Officers Bill of Rights.

III. Accountability in Collective Representation

These proposals address several changes to the statutory protections afforded to law enforcement officers.

g. Bargaining Units.

This proposal addresses the concern of structures in police departments being organized with higher-ranking officers having the authority to supervise and discipline lower-ranking officers. In many areas, not just California. Both supervisory and officers in internal investigations are in the same bargaining unit and represented by the same union. In those circumstances, it can be difficult for a higher-ranking officer to effectively discipline or investigate a lower-ranking officer. The group proposed that law enforcement officers above the rank of sergeant shall not be included in the bargaining units of officers at the rank of sergeant or below. In addition, neither officers in units of sergeant and below nor officers in units of higher-ranked officers shall represent officers in the other units in bargaining, grievances, or civil service appeals.

h. Allow Mid-Term Modification of Use of Force Policy

Propose that there be a new law that would clearly state that no term of a law enforcement officer contract, including a "zipper" clause, shall be interpreted to prevent modification of a use of force policy during the term of the agreement.

It is my belief that these proposals represent a starting point in the discussion is necessary to address criticisms and concerns raised about policing, collective bargaining, and arbitration. As indicated in the article, there was not a consensus on several of the proposals and some in the group would consider more "radical" changes. However, these proposals present a modest basis for discussion of reforms to police discipline. Indeed, the ability to enact reform ultimately resets with the legislators, municipal and union leadership, and the surrounding community.

There is also precedent for such efforts. In the comments by Professors Malin and Slater it was noted that:

> "The idea of partnering with unions is probably anathema to most police chiefs. And it is easier politically for union officials to play to rand-and-file feelings that they are under siege than to engage in meaningful cooperation with management. But with calls to defund police departments and to eliminate police

> collective bargaining, both labor and management may feel they are facing existential moments and have some incentive to come together to address that.
>
> Such a partnership should include what highly respected law enforcement professionals have advocated: root cause analysis to review deadly force incident to reduce systematic errors that contribute to tragic loss of life. Instead of city leaders blaming the union and union leaders stoking rank-and-file siege mentality, both might learn from school districts and teacher unions and partner on root cause analysis involving other experts and community leaders as well."[22]

Malin and Slater pointed to successes resulting from cooperation between school districts and teachers' unions in identifying problem performers. The parties have engaged in upgrading evaluation systems and criteria along with peer evaluation. As a result, the rates of improvement and attrition of poorly performing teachers have increased. "The union's role is transformed from protecting members at all costs from the process unilaterally imposed by management to protecting the professional standards that the union itself was involved in developing."

The vast majority of police officers work hard to honor their oaths to serve and protect their communities. Unfortunately, the actions of a few perpetuate the view of policing, as an American institution "created by and for the benefit of the elites of the dominant caste and enforced by poorer members of [that] caste who have tied their lot to the caste system rather to their own convictions."[23] There are officers who seize the opportunity to be engaged in this service while there are a few others who feel they are tasked to enforce the rules in a community they know little about, don't care to know about, or just don't like. Everyone knows who these officers are. These times should present the opportunity for all affected to not engage in blaming the union or protecting the non-performers at all costs. Rather, those involved could work to upgrade and promote the professional standards that are critical to effective policing.

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[22] See "*In Defense of Police Collective Bargaining"* Chicago Sun Times, *supra.*
[23] Isabel Wilkerson, *Caste: The Origins of Our Discontents,* Random House, 2020

IN RE: VETERANS PREFERENCE HEARING BETWEEN

PETER BRAZEAU

and the

CITY OF MINNEAPOLIS POLICE DEPARTMENT

BMS Case No. 19-VP-0740

Hearing Held: July 23 & 24, 2019
Briefs filed: August 30, 2019
Record Closed: August 30, 2019

Award Issued: October 17, 2019

Appearances:

Trina Chernos, Assistant City Attorney, for the City of Minneapolis.

Joseph A. Kelly, Kelly & Lemmons, P.A., for the Veteran.

INTRODUCTION

Pursuant to Minnesota Statute 197.46, the Veterans Preference Act, Veteran, Peter Brazeau, and the City of Minneapolis selected Sherwood Malamud from a list provided by the Minnesota Bureau of Mediation Services to serve as the Arbitrator to hear and determine whether the Notice of the Chief of the Minneapolis Police Department to discharge Veteran Peter Brazeau for alleged misconduct or incompetency should be sustained, modified or reversed.
Hearing was held on July 23 and 24, 2019 in the Minneapolis City Hall. The hearing was transcribed. The parties filed briefs by August 30, 2019. The Arbitrator has fully considered the evidence presented at the hearing, and the written arguments of the Veteran and the City in issuing the following:

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

FINDINGS OF FACT

1. Peter Brazeau, hereinafter Brazeau or the Veteran, enlisted in the United States Marine Corps (USMC). He was deployed on two occasions to Iraq.

2. The City of Minneapolis and its Police Department, hereinafter the City or the Employer, is a governmental subdivision of the State of Minnesota.

3. After receiving an honorable discharge from the USMC, Peter Brazeau attended the University of Wisconsin-Stout, from which he graduated Summa Cum Laude in 2012.

4. The Employer hired Brazeau as a Community Service Officer in 2013. Then, it hired him as a Police Officer. He attended the Employer's Police Academy. He became a fully licensed law enforcement Officer in the City of Minneapolis Police Department in 2014. Eventually, he was permanently assigned as a Patrol Officer in the 1st Precinct.

5. On April 27, 2016 Officer Brazeau was awarded a Life Saving Award for his successful effort, together with Officer Courtois, in preventing a female from jumping from an overpass. On October 31, 2016, the then Chief of Police Janee Harteau notified the Veteran of his selection as the July 2016 First Precinct Officer of the Month.

6. Officer Brazeau and Officer Alexander Brown were assigned to and worked the power shift, from 8:00 P.M. to 4:00 A.M. on December 28-29, 2016.

The Incident

7. At approximately 2:00 A.M., Officers Brazeau and Brown were dispatched to the Gay 90s bar on Hennepin Avenue in downtown Minneapolis. Upon their arrival, they encountered an individual, BD. In the report that Officer Brazeau completed on December 29, 2016 at the 1st Precinct toward the end of his shift, he describes his two encounters with BD, as follows:

> I saw A1(BD) standing in the patio of the Gay 90's yelling "south side" repeatedly. I saw that A1 had blood on his face and hands. A1 was asked for his ID, and attempted to give my partner cash. A1 threw the cash on the ground and I saw my partner pick it up and hand it back to A1. Staff at the Gay 90's said he was not drinking at their bar. I gave A1 a black hat and pair of glasses I found on the patio, which he said belonged to him. I saw a black jacket on the sidewalk in front of the patio, and asked A1 if it was his. A1 said it was his, jumped over

> the patio railing and walked north on Hennepin Avenue S towards 4th Street S I saw A1 begin walking east on 4th st S from Hennepin Ave S. My BWC [body worn camera] was activated. . . During [this encounter] A1 said he did not want EMS or police assistance.
> [The description of this encounter is corroborated by the Body Warn Camera, the BWC, footage, Disc 1294.]

8. The Officers asked BD where he was going. They encouraged him to go in a direction, where he would not encounter other members of the public.

9. Approximately 5 minutes later, while on patrol in their vehicle, they heard yelling coming from the Nicollett Mall in front of the Xcel Energy Office Building. Officer Brown drove the squad car. It was approximately 2:10 A.M. Two pedestrians passed BD. It appeared to the Officers from their vehicle that BD shoulder checked one and attempted to spit on the other. When Officer Brazeau exited the vehicle, he informed BD "You are going to the hospital now, you are in **protective custody**." (Emphasis added)

10. BD turned to face Officer Brazeau. The video from his camera (bwc) indicates that BD's hands were not clenched in a fist. BD stopped to take-in what he was told. Officer Brazeau ordered BD "to turn around; put your hands behind your back." Without any further statement or command from either Officers Brazeau or Brown, BD went face down, spread eagle, on the ground. Officer Brown directed BD to put his hands behind his back. BD allowed both officers to proceed to handcuff him, while he was lying face down on the pavement.

11. Officer Brazeau and then Brown thanked BD for his cooperation. Then, Officer Brown added, "Honestly, you're kind of boring." Officer Brazeau agreed.

12. Then, the officers turned BD from face down to his back. They directed him to get up. While being turned on his back, BD restated how the officers had characterized his behavior, "boring." Then he called the officers "pussy assed ni--ers." They did not put their hands on BD to assist or continue control over him.

13. Officer Brown in a voice viewed by police supervision as taunting and

ridiculing of BD stated, "OK Get up, get up, can you get up? Ahh, no you can't get up," then--

14. After approximately 10 seconds, when it appeared that BD could not get to his feet without assistance, the officers bent down to assist BD to his feet.

15. As they bent down, BD up-kicked his left foot to approximately a 90 degree angle to his body hitting Officer Brazeau in the chest and knocking off his body worn camera (bwc).

16. As BD's left foot was lowering to the ground, he up-kicked with his right foot. Officer Brazeau was able to deflect BD's right foot.

17. Officer Brazeau then placed his knee on BD's chest and with a closed fist struck BD with 3 to 4 strikes to BD's left cheek and jaw.

18. While Officer Brazeau struck BD, Officer Brown struck BD once on the right side of his jaw. Officer Brown then shifted his position to place his weight on BD's legs.

19. As Officer Brazeau reacted to the kick with strikes, he said in anger, "Get on the fucking ground mother fucker." A few seconds later Officer Brown said, "it was the wrong move, pal." BD gave a brief grunt/ laugh in response.

20. The officers turned BD face down on the pavement, while he bled profusely. Officer Brown took control of BD's head. Officer Brazeau called for EMS for medical assistance and a supervisor due to the use of force.

21. While waiting for other officers and supervision to arrive, Officer Brazeau went to the squad car to retrieve a spit hood to place over BD's head. Officer Brown placed the spit hood over BD's head. BD continued to struggle and yelled "I'll fuck you up–South side" what BD had repeated previously during the interaction with the officers on the terrace of the Gay 90s bar.

22. Within 2-minutes, two other officers arrived to assist. BD continued to struggle grunt and yell.

23. During the period of time the officers waited for the arrival of medical assistance, the Officers rotated BD from face down to his side. An ambulance arrived approximately 6-minutes after this encounter on the Nicollett Mall began. Upon the arrival of the ambulance, one officer told BD he would secure his legs, if BD did not stop kicking.

24. After EMS arrived, BD continued to struggle. The medical responders administered Ketamine to calm BD down. After it took effect, the officers assisted the medical responders to lift and transport BD into the ambulance.

25. When Sgt. Schmid arrived at the scene, Officer Brazeau advised him of the amount of force he used.

26. Officer Brazeau rode with BD in the ambulance to HCMC. Officer Brown reviewed with the security officers of the building footage of the incident taken by the camera on the Excel Office Building.

27. Since Ketamine was administered to calm BD, he was intubated at the hospital. Medical staff at HCMC diagnosed BD's medical condition on arrival.[1]

28. BD's medical records reflect that when he "eloped" checked himself out and left the facility without being medically discharged, many of the conditions detected on his arrival were resolved.[2]

29. The following medical issues were not resolved: 1. Lactic acidemia;

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[1]BD's medical condition as documented upon his arrival at the HCMC was: 1. Acute toxic encephalopathy; 2. Agitated delirium. 3. Intubated for airway protection; 4. Lactic Acidemia; 5. Hypokalemia.

[2]When he checked himself out a number of his conditions were resolved including: 1. Acute toxic encephalophy; 2. Agitated delirium; 3. Hypokalemia.

2. Traumatic Brain injury; 3. Facial trauma with Nasal bone fracture. The medical diagnoses upon arrival and self-discharge (elopement) did not determine or suggest how BD suffered these medical conditions.

The Complaint and its Processing

30. On December 30, 2016, the day after the incident described in paragraphs 6 through 29, Police Department supervision filed a complaint against both Officers Brazeau and Brown. The complaint finds fault with their use of excessive force towards BD on December 29, 2016 in violation of Minneapolis Policy and Procedure 5-303. The complaint alleges that the Officers failed to de-escalate the situation in violation of policy 5-304(B). Officer Brown was charged with an additional violation unrelated to the conduct of Officer Brazeau. It is not pertinent to the determination of this Veterans Preference matter.

31. In January 2017, coinciding with his next scheduled shift after the incident, the Minneapolis Police Department (MPD) placed the Veteran on work status - Relieved of Duty. He had to remain available at home between 8 a.m. and 4 p.m Monday through Friday. He remained in that status until October 12, 2017.

32. The complaint was first referred to the City of Minneapolis City Attorney for review to determine whether Officer Brazeau should be charged criminally for his assault on BD. The City of Minneapolis City Attorney cited a possible conflict of interest and referred the matter to the City Attorney of the City of St. Paul to conduct this criminal review.

33. On **May 19, 2017**, St. Paul Assistant City Attorney Clifford Berg wrote to the Office of the Minneapolis City Attorney with his determination, to decline to charge either officer **criminally** for their actions toward BD on December 29, 2016. He declined to bring charges on the basis of the following analysis:

> The statutes of Minnesota provide that anyone who intentionally inflicts or attempts to inflict bodily harm upon another is guilty of assault in the fifth degree. Minn. Sta t. §609.224 subd1(2).

Reasonable force, however, may be used upon or toward the person of another without the other's consent when the actor, in this case a public officer, reasonably believes that it is necessary to effect a lawful arrest or in executing any other duty imposed upon the officer by law. Minn. Stat. §609.96 subd 1(1)(a) and (d). In determining the reasonableness of the use of force a reviewing court must judge a particular use of force from the perspective of a reasonable officer on the scene. Ward v. Olson, 939 F. Supp.2d 956 at 962 (US Dist. Ct. Minn. 2013). "The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments–in circumstances that are tense, uncertain, and rapidly evolving– about the amount of force that is necessary in a particular situation. . . .

Although the officers caused bodily harm to BD, it is my assessment that they should not be prosecuted for assault because it is not clear beyond a reasonable doubt that they exceeded a reasonable use of force while conducting a lawful arrest or other duty imposed upon them by law. When Officers Brazeau and Brown encountered BD on Nicollett Ave they did so with prior knowledge that he had been fighting at another location. BD appeared to be highly intoxicated and had impaired judgment. The officers further observed that BD appeared to cooperate by laying down on the ground and allowing the officers to cuff him, his demeanor shifted quickly and unexpectedly. Although BD was handcuffed while he kicked Officer Brazeau, he was not sufficiently secured that he presented no safety risk to the officers or himself. The officers were not able to safely grab BD's legs because he was kicking them. Given all these factors it is my opinion that at a trial, the officers would likely have a reasonable claim that their actions were necessary to gain control of BD before he injured them or himself. While the blows to BD's face are difficult to observe, it is my opinion that there is a reasonable doubt as to whether the officers exceeded the reasonable use of force afforded them as officers of the law. For those reasons, it is my recommendation that charges be declined as to both officers.

34. On **May 23, 2017**, Sgt Sand of the Internal Affairs Unit of the Minneapolis Police Department (MPD) notified Officer Brazeau, the Veteran in this proceeding, to prepare and report on June 1, 2017 to provide a Garrity statement, to an Internal Affairs inquiry concerning his alleged violation of the Department's Use of Force policy 5-303 and the De-escalation policy 5-304(B).

35. On **June 1, 2017**, Officer Brazeau reported as directed. At the outset of the questioning, he signed a Tennessen Warning that the information he provides will be used in the fact-finding process to determine if he engaged in any misconduct. Any admissions he makes may be used for the purpose of imposing discipline. The notice informed the Veteran who may have access to the information he provides.

36. Officer Brazeau was interrogated by Sgt. Sand on June 1, 2017. Sgt Sand inquired and Officer Brazeau reported what occurred at approximately 2:00 a.m. on December 29, 2016 during the two encounters with BD. Officer Brazeau indicates why he did not place BD in protective custody at the end of the first encounter, and then he describes the second encounter, as follows:

> A. Because he was intoxicated, he was able to care for himself. But, now, he's being a danger to other people cause he's trying to start fights, he's assaulting and spitting on them, um. Committing disorderly conduct and at least 5th degree assault. Due to his level of intoxication, I . . . we got out of the car. I told him immediately-just like we are trained in Procedural Justice, it helps to deescalate the situation to explain to him– what's going on, where he's going, what's happening. So, I got out of the squad and said you're in protective custody, you're too intoxicated, starting fights with people, you're gonna go to the hospital. (City Exhibit #9, p.3 lines 29-36)
>
> . . .

After describing how BD just went to the ground, face down and allowed the two officers to cuff him, Sgt. Sand asked:

> Q: Were you expecting like him to fight at this point?
> A: I was. Like I said, when I told him he was in protective custody, he turned around and clenched up, and he was in a fight earlier. I just watched him assault two other people as he was walking down the street. I fully expected him to fight. (Id p. 4, lines 14-17)
>
> . . .
>
> Q: And then, you give up. . . you guys decide to-, backup, ...give up control of BD. Why did you do that?

A: Uh, in the Procedural Justice training, they told us to ... we wanna have... give each person their voice. We want to allow them to have some buy in and helps them buy in to the decision. Id lines 31-35.

Officer Brazeau then describes how at the Gay 90s bar BD demonstrated his agility by hopping over the crowd control metal barrier. Officer Brazeau determined that by giving BD that opportunity it calmed him down at the first encounter. He continued to answer the last question:

I figured if he was gonna be able at least standup or stand part of the way up and I could assist him that maybe he'd calm down a little bit and buy into our decision. I could try and keep explaining to him, like I had already been, that we were going to the hospital and he wasn't under arrest. (Id lines 37-41)

Officer Brazeau describes how BD kicked him with his left foot in the chest, knocking the wind out of him and knocking off his BWC.

Q: And then, take me through what-, what you did next.
A: Then, I placed my knee on his chest and delivered three to four strikes to his face.

Q: Why did you think that was the appropriate force to use?
A: Um, according to our training and response guide, he was committing an active aggression because he did assault me. It's behavior that constitutes an assault. I am able to respond with anything up to the baton according to our Use of Force Matrix. Um, I chose stunning strikes because I didn't have the opportunity to pull my baton out and use it. I also didn't have the opportunity because he was still kicking at that time. And he was continuing to try to assault me after he already did once. I couldn't grab his legs without being kicked again. I've seen numerous articles in the paper where officers have been kicked in the face and lost their eyesight. I didn't wanna risk that to myself or my partner. Delivering three to four punches to his face, which is less force than the kick he used against me, was the best option I had at the time.

Q: So, he was lying on his back handcuffed. What kind of a threat was he at that time?

A: He was obviously a great threat-, threat. Like I said he kicked me, knocked the wind out of me, tried to kick me again. If he would have kicked me in the face or my partner in the face, we could lost our eye, could have broke our jaw. I did mention before I've seen numerous articles where officers have been injured. Just because someone is in handcuffs doesn't mean that they're unable to assault you. (Id lines 20-41)

Q: So, you didn't, uh ... so uh, backing away from him was not an option?
A: No, Once we... you know, I took a step back to allow him the opportunity to try and get up to deescalate. He said he could get up on his own. At that time, it didn't appear that he could, but maybe he could have. If we backed up a way and gave him enough time, then he could have ran away. We were right next to the light rail. He could have been run over by a train. I can't allow that to happen. We're responsible for him once he is in our custody.

Q: And then, you said... how many punches did you deliver?
A: I believe three or four. I did not count.

Q: Why was three to four necessary instead of one.
A: Because he was continuing to kick. As soon as I felt that he was not kicking anymore, I ceased my strikes immediately. You could hear me on the video I aired for a supervisor for use of force per policy and I also aired for an ambulance per policy.

Q: And the, uh, you tell him to get on the ground, but he was already on the ground?
A: That's an... it was an instinctive response to our... Like the way we've been trained is if someone strikes, you try and block or move out of the way of the kick if you can, deliver strikes, and yell at them to get back or get on the ground. That was just my instinctive response from the training that I have received. (Id p. 6 lines 1-25)

37. Chief Arradondo became the interim chief in September 2017. He officially began a three year term as Chief in January 2019.

38. On **October 12, 2017**, Assistant Chief Kjos, the Departments' second in command, changed the Veteran's work status from Relieved of Duty

to Non-Enforcement Duty. He continued his assignment at the 1st Precinct, where he was assigned to monitor the camera input from various locations in Downtown Minneapolis. He had no contact with the public in that assignment.

39. On **December 12, 2017**, the Police Conduct Review Panel, comprised of 2 civilians and 2 MPD Lieutenants, met to review Sgt. Sands report, from the Internal Affairs Unit, City Exhibit 3. The report is undated and un-signed. The Panel determined there was merit to the allegation that Officer Brazeau violated MPD Policy 5-303. The Panel was unanimous in its judgment that there was merit to the allegation that "Officer Brazeau had used unauthorized force on BD by punching BD in the face multiple times while handcuffed behind his back lying on the ground" the Veteran violated the Use of Force Policy. It remanded the charge that Officer Brazeau failed to comply with the de-escalation policy 5-304(B). The determination of this Panel is advisory to the Department.

40. On **December 13, 2017**, the day following the decision of the Police Conduct Review Panel's finding that Officer Brazeau violated the Department's Use of Force Policy 5-303 (paragraph 39 herein), Assistant Chief Kjos changed the Veteran's work status from Non Duty-Enforcement Duty to Full Enforcement Duty assigned to the power shift, his shift assignment when the above described incident occurred.

41. On **August 14, 2018**, in his Loudermill meeting with supervision, the Veteran presented his side of what occurred and defended his actions on December 29, 2016 against the allegations that he violated MPD policies 5-303-Use of Force, 5-304(B)-De-escalation and 5-306 Use of Force Reporting and Post Incident Requirements.

42. At the beginning of 2019, Deputy Chief Halverson and Assistant Chief Kjos met several times as a Departmental Discipline Panel. On **February 14, 2019** Deputy Chief Halverson authored a recommendation that Officer Brazeau's employment be terminated for his excessive use of force on

December 29, 2016 against BD. The two high ranking officers, Assistant Chief Kjos and Deputy Chief Halverson, reasoned, in part:

> "Why would it be necessary to use force (stunning strikes or even the baton Officer Brazeau had planned to use) on a subject that: 1) was on the ground 2) on his back 3) showed he could not get up and 4) was handcuffed? . . . We again ask if BD was a flight risk [for the above stated reasons]

In his memo Deputy Chief Halverson engaged in the analysis set forth in the Use of Force Policy, 5-303:

> **-Application of Graham vs. Connor:**
> **From MPD Policy 5-303 The Graham vs Connor case references that:**
>
> "Because the test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application, its proper application requires careful attention to the facts and circumstances of each particular case, including:
> - The severity of the crime at issue,
> - Whether the suspect poses an immediate threat to the safety of the officers or others, and;
> - Whether he is actively resisting arrest or attempting to evade arrest by flight.

The "reasonableness" of a particular use of force must be judged from the perspective of the reasonable officer on the scene, rather than with the 20/20 vision of hindsight. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments-in circumstances that are tense, uncertain and rapidly evolving-about the amount of force that is necessary in a particular situation." Authorized use of force requires careful attention to the facts and circumstances of each case. . . .

If we look at the three points of the Graham vs Connor in this case: (City Exhibit H p. 6)

-Severity of the crime at issue in this case:
Initially the officers were not going to arrest BD for a crime. They were placing him in 'protective custody'. The incident

did move to a crime when BD kicked Officer Brazeau and it became a 4th degree assault with a kick to the chest, which is a gross misdemeanor.

-Whether the suspect poses an immediate threat to the safety of the officers or other, and BD did kick Officer Brazeau. But BD is handcuffed behind his back, lying on the ground and lying on his back. Given these three points BD does not appear to be able to do any harm to either officer. They could have disengaged with BD as he did not appear to get up on his own and flee.

-Whether he is actively resisting arrest or attempting to evade arrest by flight.

BD is initially compliant to be taken into protective custody. But became uncooperative and kicked Officer Brazeau. These officers had other options to control a handcuffed subject who was on his back and on the ground.

Deputy Chief Halverson then reflected on Officer Brazeau's lack of thoughtfulness, when given the opportunity to indicate in hindsight if he would do anything differently. It indicated to the authors of the recommendation a lack of critical thinking by Officer Brazeau. The Veteran's negative answer weighed heavily in the decision to recommend termination.

43. On February 15, 2019, Chief of Police Medaria Arradondo recommended the termination of Peter Brazeau from the Minneapolis Police Department. Chief Arradondo based his decision on the statements of Officer Brazeau that he made in the investigative process, Departmental records and the recommendation of Assistant Chief Kjos and Deputy Chief Halverson. Chief Arradondo reasoned:

We must first do no harm.

On December 29th, 2016 at approximately 0200 hours, Officer Brazeau you identified an adult male named BD in downtown Minneapolis who you believed was intoxicated, belligerent and needed to be taken into *protective custody*. This particular incident's outcome involving yourself and Officer Brown neither provided protection to BD and custody was handled by paramedics as a result of the injuries BD sustained from the force used against

him by you and your partner while he lay handcuffed on his back.

. . .

As Chief I am proud of the fact that the MPD engages with our community through Procedural Justice. Giving others Voice, being Neutral in our engagements, treating everyone with Respect and building Trust. I expect every officer to treat our public in this manner.

. . .

Officer Brazeau after the actions of BD that involved a kick that did not cause any significant injury to you or your partner you proceeded to use profanity towards BD then punch him in the face four times which medical records noted he suffered a broken nose along with other facial injuries. Your actions were unwarranted and unacceptable.

. . .

You intentionally inflicted unreasonable physical force on a vulnerable member of our community causing injury and yet you felt justified in your conduct. For those reasons stated you have forfeited your right to be a member of the Minneapolis Police Department. I have made the decision to terminate your employment effective immediately. (Italics added)

The Arbitrator makes the following:

CONCLUSIONS OF LAW

1. Officer Peter Brazeau is a veteran within the meaning of Minn. Stat. Sec. 197.46, the Veterans Preference Act, and subject to its protection.

2. The City of Minneapolis Police Department is a municipal employer subject to the mandates of the Veterans Preference Act.

3. The City of Minneapolis Police Department fully complied with Sec. 626.89, the Peace Officer Discipline Procedures Act in that the Police Conduct Review Panel, in an advisory capacity, in accordance with Sec. 626.89 (17,) determined there was merit to the charge that Officer Brazeau used excessive force on December 29, 2016 towards BD, and

4. The Police Conduct Review Panel continued to advise: "The allegation stated does not violate the wording used in the De-Escalation Policy 5-

304(B), however, there appears to be antagonistic behavior by Officer Brazeau which could violate the code of conduct or other policies." City Exhibit "C" p.5

5. By his conduct on December 29, 2016 as depicted in videos 1293, 1294, 1295, 1296 and 1297 and on the basis of Internal Affair Unit Report of Sgt. Sand, the Garrity interview conducted on June 1, 2017 and Officer Brazeau's Loudermill statement on August 14, 2018, Officer Peter Brazeau violated the Minneapolis Police Department's Use of Force Policy 5-303.

6. The City of Minneapolis did not follow through and continue to allege that Officer Brazeau violated the Minneapolis Police Department's De-Escalation Policy. That allegation is hereby dismissed.

7. Officer Brazeau's Life Saving Award and Officer of the Month Award for July 2016 from the Minneapolis Police Department together with his job performance as an Officer and Field Training Officer in the 1st Precinct from December 13, 2017 to the date of the termination of his employment on February 15, 2019, at a job performance level of *Exceeds Expectations*, serves as mitigating factors which make the imposition of the discharge penalty inappropriate. The City of Minneapolis Police Department does not have just cause to discharge Officer Peter Brazeau. It does have just cause to impose the most severe penalty contemplated by the Departmental Discipline Matrix, an 80-hour suspension without pay. The discharge penalty shall be reduced to an 80-hour suspension without pay.

8. The Veteran, Peter Brazeau is the prevailing party, within the meaning of Sec. 197.46 (e), since in this Award, ". . . an arbitrator and the hearing reverses the level of the alleged incompetency or misconduct requiring discharge. . ." The Arbitrator set aside the discharge penalty, but the Veteran was subject to substantial discipline for his conduct on December 29, 2016. (Emphasis added)

Based upon the above Findings of Fact and Conclusions of Law, the Arbitrator issues the following:

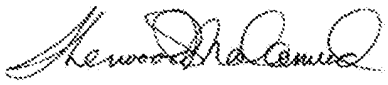
AWARD

1. The City of Minneapolis does not have just cause to discharge, Veteran Peter Brazeau. It does have just cause to discipline Veteran Peter

Brazeau with an 80-hour suspension without pay.

2. Within 14-days of the issuance of this Award, the City of Minneapolis Police Department shall reinstate Peter Brazeau to a position as a Police Officer in the Minneapolis Police Department, but subject that reinstatement to an 80-hour suspension without pay.

3. Prior to placing the Veteran in Full-Enforcement work status and no later than 90-days of Peter Brazeau's reinstatement, the Minneapolis Police Department shall provide the Veteran with the following training either on an individual basis or in Departmental training with other officers and demonstrate: 1. How to safely handcuff an individual from the perspective of the person handcuffed and the officer; 2. How to maintain control of an individual who is handcuffed; 3. How to address continued resistance by a handcuffed individual, due to their level of intoxication or mental impairment, i.e., flailing of hands and/or feet in the variety of settings in which taking custody of an individual may occur.



Dated: October 17, 2019

Sherwood Malamud, Arbitrator

DISCUSSION

Introduction

Under Minn. Stat. Sec. 197.46 (d), the Veterans Preference Act, the decision of the Arbitrator is appealable to District Court within 15-days of the issuance of the Arbitrator's Award/Decision. For that reason the Arbitrator structured this Award with Findings of Fact, Conclusions of Law and Award to facilitate judicial review. In this section of the Award, the Arbitrator explains the basis for his Findings, Conclusions and Award.

The context of this Award is subject to at least two assumptions. However, to better understand the Award, those assumptions are expressly set forth. First and foremost, when a police officer leaves his home to assume his duties, he has every right to expect that he will return at the end of his shift alive and uninjured. Departmental policies and training should provide the tools to meet that expectation.

Unlike most employment settings, a police officer is frequently placed in factual circumstances and settings in which he must meet the challenge of force used against him or he must use force on another. Thus, the use of force, how much and under what circumstances, is central to the exercise of a police officer's authority. It is a hard job. It requires the exercise of judgment. Such judgment is obtained through training and experience. Members of the public are the beneficiaries or the victims of an officer's judgments.

ISSUE

> Did the City of Minneapolis Police Department have just cause to discharge Officer Peter Brazeau on February 15, 2019? If not, what is the appropriate remedy?

The parties suggest other versions of this statement of the issue in their arguments. However, the above statement sets out the question that must be answered by this decision.

Findings and Conclusions

The parties do not dispute any procedural matters. Peter Brazeau is a Veteran. He is employed by the municipal employer the City of Minneapolis Police Department. The Chief of Police notified the Veteran of the Chief's intention to terminate his employment. The Veteran timely filed a request for a hearing. The parties selected Sherwood Malamud to conduct this Veterans Preference Hearing and issue this Award pursuant to Minn. Stat. Sec. 197.46, the Veterans Preference Act.

Use of Force

The central factual dispute in this case is whether the amount of force employed by Officer Brazeau on December 29, 2016 was excessive. And, the conclusion of law that follows is whether that amount of force violates the Department's Use of Force Policy, 5-303.

The City, which under the Veterans Preference Act bears the burden of proof, presented its case-in-chief through the testimony of Deputy Chief Halverson and Chief of Police Arradondo. The great weight of that burden was met through City exhibits, particularly, the five videos of both encounters of Officer Brazeau with BD; the Internal Affairs Unit report of Sgt. Sand; the transcript of Officer Brazeau's Garrity questioning and his Loudermill statement. Extensive quotes from the above documents appear above in the Findings of Fact.

The City argues that Officer Brazeau employed a brutal level of force that clearly violates the Department's use of force policy. Chief Arradondo concludes in his memo terminating the Veteran's employment that Officer Brazeau's strikes broke his nose and caused other medical injuries to BD.

While it is difficult to view the swift and decisive closed fist strikes delivered by Officer Brazeau to BD's left cheek and jaw, the Arbitrator's multiple reviews of the videos suggest that Brazeau's strikes may not have hit BD's nose. Further, BD was engaged in a fight prior to the arrival of the officers at the Gay 90s terrace at 2:00 a.m. His face was bloodied, when they first encountered him. He may well

have suffered a broken nose in that fight that preceded BD's contact with Officers Brazeau and Brown. The record evidence supports a finding that BD suffered a broken nose. It does not establish how BD sustained that injury.

In the word of the medical report of BD's stay at the HCMC on December 29, 2016, BD "eloped." He left the facility without being discharged by medical staff. Subsequently, Deputy Chief Halverson searched for BD, but he was unable to find him. BD did not testify at the Veteran's Preference hearing in July 2019. The 5-videos depict BD's treatment on December 29, 2016 by Officers Brazeau and Brown.

The parties hotly contested whether the Department's policy and training provided an officer with a range of discretion in which the use of strikes as used by Officer Brazeau was contemplated and appropriate. The Use of Force Matrix, as it was formerly known or under the Department's current name for the use of force continuum, the Defense and Control Response Training Guide, (City Exhibit #20) charts the range of responses an officer may take to the range of actions that individuals subject to arrest may present to an officer. There is no dispute what the color coded shading communicates to an officer. He may respond within a broad range of responses up to and including use of a baton to an individual whose actions are actively aggressive toward the officer.

The Veteran's witnesses, particularly Lt. Kroll, the Minneapolis Police Federation President and Scott Bechtold, the consultant employed by the Union to testify in this case, and the Veteran himself testified to the range of responses authorized under the circumstances present on December 29, 2016. They testified to the **objective reasonableness standard** included in the Department's policy 5-303 through reference to the 1989 decision of the U.S., Supreme Court decision, Graham v. Connor, which measures the level of force appropriate to a particular set of circumstances.

Mr. Bechtold testified that the objective reasonableness standard is vague. Its application is dependent on careful attention to the facts and circumstances in which an officer employs force. The Supreme Court and the Department's policy highlight the following three factors: 1. The severity of the crime at issue; 2.

Whether the suspect poses an immediate threat to the safety of the officers or others; 3. Whether he (the suspect) is actively resisting arrest or attempting to evade arrest by flight.

The Veteran's expert testified that the officers had 1. the lawful authority to seize BD and take him into protective custody. 2. BD posed a threat to the officers, when he kicked Officer Brazeau. The Veteran's expert opined that: 3. BD resisted arrest:

> "The resistance that I observed was when the officer told him that he was being taken into custody and to turn around and put his hands behind his back and he did not comply. That's not active resistance, that's more passive resistance." Transcript, P. 469

The expert characterized BD's kick as active aggression. He testified that the range of responses contemplated by the Department's Use of Force Policy, 5-303 to an act of active aggression falls within:

> The reasonable range that's defined in the diagonal line with the– based upon the Minneapolis Police Department's different options. And at that time, they could use anything from chemical aerosol, Taser, restraint, stunning strikes, which are unarmed strikes, and baton. (Transcript p. 470)

The expert continued his testimony that it was reasonable to begin immediately with strikes to the face to conform to training to immediately get the situation under control. Officer Brazeau successfully did bring the situation under control.

The expert stated that an officer need not begin his response at a lower level of force than the force employed by the suspect on the officer. The expert testified that the longer the situation continues the likelihood of further injury to the suspect or the officer and further harm increases. The expert observed that when the threat ceased, a total of not more than 3 seconds from the kick to the cessation of strikes, the strikes ended.

The expert opined that Deputy Chief Halverson's memo recommending Officer Brazeau's termination manifested 20/20 hindsight contrary to the

Supreme Court's warning in Graham v. Connor to refrain from viewing an officer's actions with 20/20 hindsight. The Veteran's defense is premised on the expert's approach to the events of December 29.

The City's justification for terminating the Veteran's employment is based on Officer Brazeau's failure to exercise judgement when applying the use of force continuum. He failed to take in and react to all the facts extent when Officer Brazeau and Brown took BD into protective custody.

Deputy Chief Halverson and Assistant Chief Kjos sought and relied on a memo prepared by the Department's Training Officer Lt. Johnny Mercil. Deputy Chief Halverson and Assistant Chief Kjos asked Lt. Mercil to review Officer Brazeau's conduct in light of the training he received on the use of force. In his February 2019 memo, Lt. Mercil characterized BD's kicking of Officer Brazeau, in the same way as the Veteran's expert Bechtold, as "active aggression."

Lt. Mercil offered advice to the officers.[3] Officer Brazeau only saw the memo at the arbitration hearing. The Department did not provide the memo to the Veteran for review, when it was written or when it was relied on in the termination recommendation of February 14 of Deputy Chief Halverson and Assistant Chief Kjos. The Veteran was not provided with a copy of the Lt. Mercil memo before or after Chief Arradondo relied on the memo in reaching his decision to terminate the Veteran's employment with the MPD.

Lt. Mercil stated in his memo to Deputy Chief Halverson:

> Head strikes- Officers are taught how and when to use strikes. De-emphasizing the use of strikes when multiple officers are on the scene is one of the key points of our DT training, and has been for years. Using body weight to control is one of the main concepts of our ground defense training program, which these officers have been

[3]The City presented the testimony of Lt. Mercil and his memo in its rebuttal to the Veteran's case-in-chief. The Veteran vigorously objected to the receipt of this evidence. The memo was not shared in advance nor did Lt. Mercil appear on the City's witness list. The Arbitrator received the memo and allowed the training officer to testify under the procedural rules that normally govern arbitration proceedings.

trained in.

> Handcuffing-Officers have been taught to assist handcuffed prisoners back to their feet when they are on the ground, by instructing the person to get up to a knee and then guiding them to their feet (one hand on the back of the neck and another under their arm as they rock forward and up)
>
> Proportionality of force- The officers need to consider the following: If it's reasonable to believe a situation can safely be controlled at a lower level of force, an Officer should start there. Officers need to be able to articulate at least one of the following when force is used:
> Lower force was ineffective (did not work)
> Lower force would likely be ineffective (would not work)
> Lower force was unsafe to try (too dangerous to try)

Lt. Mercil advised in his memo that if it is reasonable to believe that a situation may be safely controlled with a lower level of force, the officer should start there. There is no evidence that Officer Brazeau's training was geared toward this advice.

Under the memo, since there were two officers present, strikes should have been de-emphasized. The memo suggests an analytical framework for the use of force that would meet the proportionality requirement articulated in the memo. Nonetheless, the Department's training officer did not provide Deputy Chief Halverson and Assistant Chief Kjos an opinion as to whether Officer Brazeau's actions violated training guidelines or was unreasonable. The absence of an opinion on this point materially weakens the City's case.

In addition to the Veteran's failure to exercise good judgment, Deputy Chief Halverson and Chief Arradondo based the discharge decision on Officer Brazeau's failure to self-evaluate his conduct. This failure plays a significant role in the termination decision. Both Deputy Chief Halverson and Chief Arradondo reference and rely on the absence of self-reflection by the Veteran over his conduct towards BD in December 2016.

The Veteran argues that since his actions fall within the Use of Force Continuum his actions are authorized and therefore, reasonable. The premise of

this argument bears closer scrutiny. The Veteran argues that he acted within the range of discretion accorded officers under the Department's Use of Force Continuum/Defense and Control Response Training Guide.

This argument does not allow for or require an officer to exercise judgment. Under the Veteran's interpretation of the Department's policy, if an individual uses an act of aggression towards an officer, the officer need not control or measure his response. There is no limit as to how much force or how long the officer may use force on that individual.

Officer Brazeau stated in his Garrity interview and in his testimony that he used closed fist strikes, because he could not retrieve his baton with sufficient speed. If he had used the baton, the highest use of force contemplated under the continuum, it could not be subject to supervisory criticism, because the Department's policy contemplates resort to that level of force, the Veteran argues. The Veteran concludes his argument, to criticize the officer acting within the range of force on the continuum is to engage in 20/20 hindsight in violation of Graham v. Connor.

The Arbitrator concludes that Officer Brazeau violated the Department's use of force policy. Here is the basis for that conclusion. The Veteran's argument downplays the exercise of judgment by the officer who is attacked with an "act of aggression" by an individual. The Veteran, Lt Kroll and expert Bechtold articulate a mechanical approach to the issue of the level of force an officer may use. They argue that the policy authorizes the use of force at the level employed by the individual or a level above. That is the message the continuum transmits. If the force falls within the continuum, then it is authorized, and therefore it should be approved.

Here, Brazeau continued his strikes for approximately 2 seconds. He successfully hit BD with no more than 4 strikes. The application of the Veteran's analysis would justify Officer Brazeau's use of a Baton for 2 or 3 minutes. Without the interjection of judgement, the beating may continue so long as it is precipitated by an individual's "act of aggression." Officer Brazeau stopped his strikes, when he felt BD's resistance stopped. However, BD continued to move his

feet and yell until he was medicated with Ketamine by the responding ambulance personnel. At some point an officer must exercise judgment when using force.

The need for the exercise of judgment by an officer forces the Arbitrator to take into account the professional opinion of the supervisors who immediately reviewed the Veteran's conduct on December 29-30, 2016 and who filed the complaint that alleged the Veteran's use of force violated Policy 5-303. Similarly, the Arbitrator must take into account the opinions of upper level Departmental management that concluded that Officer Brazeau used excessive force.

The Veteran's expert Bechtold testified that Graham v. Connor dictates that the Arbitrator follow very carefully the facts extant on December 29, 2016 while avoiding use of 20/20 hindsight in evaluating Officer Brazeau's decisions and actions. The expert describes a process that must follow a fine line of analysis. The Arbitrator finds that the expert's admonition is grounded in Graham v. Connor, the Supreme Court's decision.

The Officer Brazeau's strikes that are the basis of this analysis occurred at the second encounter between BD and the officers, at approximately 2:00 a.m. on December 29. From the time the Officers exited their squad car, the handcuffing of BD and the arrival of other officers and an ambulance no other pedestrians were present in any proximity to the scene of the incident. No other persons were present that might introduce external pressure to the situation.

Both Officer Brazeau and the expert Bechtold describe BD as assuming a hostile stance, one which indicates an intent to resist arrest. When Officer Brazeau exited the squad car, he informed BD that the officers were taking BD into protective custody. The Arbitrator viewed the scene depicted in the videos. When Officer Brazeau exited the squad car and informed BD that he is being placed in protective custody, the Arbitrator did not view BD clenching his fists. Rather, he delayed several seconds and then he went spread eagle face down on the sidewalk. The expert omitted BD's going spread eagle on the sidewalk from his judgment of BD's stance toward Officer Brazeau. Yet, BD's action allowed the two officers to easily handcuff BD, so much so that Officer Brown characterized the handcuffing process as "boring," a characterization in which Officer Brazeau

concurred.

As the officers turned BD from face down to his back, BD called the officers, "pussy assed ni--ers." Officer Brazeau states that BD indicated that he wanted to get up on his own.[4] Then, Officer Brown, employing a taunting tone said, "Ahh you can't get up." The officers each on a side of BD bent down to help BD up. Then, BD kicked officer Brazeau.

Officer Brazeau explained in his Garrity interview that by relinquishing control over BD, he was implementing a technique of procedural justice. The training for assisting a handcuffed individual to stand up is described in Lt. Mercil's memo. The officer should encourage the individual to get to a knee, however, the officer should continue contact by holding the back of the neck of the individual and by using his other hand to grasp the individual under the arm to assist him up. None of these actions preclude the use of procedural justice technique on the individual. Neither Officer Brazeau nor Officer Brown implemented the technique described by the training officer.

Instead, the officers gave up control. When it became clear that BD could not get up, they had to bend down to help him up. BD demonstrated remarkable agility during the first encounter with the Officers, when he was able to jump over the crowd control barrier on the terrace by the Gay 90s bar. BD, again demonstrated remarkable agility by kicking almost at a 90 degree angle while lying on his back in handcuffs to kick Officer Brazeau in the chest with sufficient strength as to knock off his body worn camera (bwc). Throughout both encounters with the Officers BD acted erratically.

The reason the Officers were taking BD into custody was not to effectuate an arrest for a crime that may have occurred prior to BD kicking Officer Brazeau, but to take him into protective custody and transport him a short distance to the hospital. At the end of the second encounter, Officer Brazeau "protected" BD by administering strikes that left a pool of blood, when the officers and medical first

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[4]In reviewing the videos, the Arbitrator did not hear or discern that BD made any comment or request to get up on his own.

responders transported BD into an ambulance.

Police Department supervision initiated the complaint against Officer Brazeau for use of excessive force, in part, because the officers were taking BD into protective custody. The videos and both his Garrity interview and his Loudermill statement reflect that Officer Brazeau did not attempt nor did he use judgment, when he struck a handcuffed BD, still intoxicated and manifesting erratic behavior.

Police supervision testified that Officer Brazeau should have backed away from BD in response to his kicking Officer Brazeau with his left foot, while BD continued to deliver another kick, which Officer Brazeau was able to parry. Instead of backing away, he delivered the 3 to 4 strikes at issue, here.

Officer Brazeau justified his rejection of backing away. He believed that BD would get up, flee and be injured by the light rail that operated a short distance from the spot of the second encounter. BD could not get up, which is the reason the officers reached down to assist him. If he did manage to get up, he would flee with his hands handcuffed behind his back. The officers would have caught him after a short distance. Officer Brazeau's explanation makes no sense. It is an afterthought stated to excuse his conduct.

The application of Graham v. Connor analysis on the basis of the above facts results in the following. 1. The severity of the crime: prior to the kick the officers detained BD to place him in protective custody. There was no crime. After the kick, BD could further harm the officers and himself. BD's agitation continued. But the setting afforded the officers time to leave BD alone and attempt to calm him down verbally. Except for BD and the two officers, no one else was present. Other officers arrived in approximately an additional 2 minutes and an ambulance arrived 5-minutes later. Without Brazeau's strikes, BD would not have left a pool of blood after he was removed from the area.

2. If the officers walked away a short distance, BD would have been unable to reach the officers and harm them. 3. BD would not have a target for his resistance. Either he would have calmed down or medical personnel would have

administered Ketamine, as they did.

The Veteran argues that stepping away extends the duration of this incident. However, at 2:00 a.m. in the absence of any passers-by, there was time to let the incident play out.

Is the above 20/20 hindsight? The absolute quiet and isolation of the scene was not going to change. The fear of BD getting up and fleeing without getting caught is not 20/20 hindsight. The possibility of flight under these circumstances was very unlikely.

Officer Brazeau's actions resulted in BD suffering extensive bleeding as a result of the blows. The videos establish that before the blows there was either little or no blood in the area BD went spread eagle. After the blows, there was a pool of blood. Officer Brazeau injured rather than protect an intoxicated BD who was acting erratically. However, Officer Brazeau in his Garrity interview, Loudermill statement and testimony at the hearing failed to recognize that his intervention was counter-productive. From his point of view, he responded within the Department's use of force continuum.

The Arbitrator does not weigh the lack of self-criticism by the Veteran as heavily as Police supervision and upper management. Since Brazeau was Relieved of Duty, he had every reason to be wary of admitting he made a mistake that would subject him to discipline.

The Arbitrator concludes that Officer Brazeau was not free to respond to BD's kick without the exercise of judgment. After he was kicked, Officer Brazeau yelled for BD to "get on the ground, you mother-fucker." BD was already on the ground. Understandably Officer Brazeau acted reflexively out of anger at the kick. Only training and experience would have changed Officer Brazeau's action. At the time of the incident in 2016, Brazeau had about 2-years experience in the Department. His inexperience as an officer contributed to his use of 3-4 closed fisted strikes to BD's "act of aggression."

Furthermore, it is undisputed that the Department does not provide its

officers with specific training on how an officer should respond to an intoxicated or mentally impaired handcuffed individual who does not calm down and continues to flail and kick at the arresting officers. Training informs the exercise of judgment.

The Department's supervisors and upper management concluded that Officer Brazeau used excessive force. The record supports that conclusion. Officer Brazeau's actions violated the Department's Use of Force Policy 5-303.

Appropriate Disciplinary Penalty

Deputy Chief Halverson recommended and Chief Arradondo accepted the recommendation to terminate Officer Brazeau for his actions toward BD on December 29, 2016. The Arbitrator is reluctant to upset the disciplinary decision of the Police Department. The complaint against the Veteran was initiated by Departmental supervision. Two Lieutenants on the Police Conduct Review Panel agreed with the citizen members of the Panel who concluded that Officer Brazeau's actions on December 29, 2016 violated the Department's Use of Force Policy. If the termination decision had been made by the end of 2017, the Veteran would have had only the two years of experience/seniority from 2014-2106 to mitigate the termination decision. The Chief considered the life-saving award Officer Brazeau received in 2016. He did not find that the award should result in the imposition of a lesser penalty. At this point, there is little indication that Officer Brazeau would employ judgment to inform the manner in which he carries out his duties.

Deputy Chief Halverson, Assistant Chief Kjos and Chief Arradondo did not make the decision to discharge the Veteran in December 2017. In December 2017, the Department restored the Veteran to duty with full enforcement responsibilities. During the period of December 2017 through November 2018, Officer Brazeau acquitted himself according to the evaluation of his supervisor at a level of *exceeds expectations*.

Chief Arradondo chose to diminish the importance of this evaluation. For whatever reason, when Officer Brazeau was assigned to full enforcement duty, he was assigned Training Officer responsibilities at the 1st Precinct. This pre-

discharge experience cannot be ignored. It does indicate that the Veteran has the ability to handle a police officer's duties and responsibilities.

Officer Brazeau's lack of seniority provides little weight to mitigate the penalty. The Veteran's pre-discharge performance during the 14-month period from December 2017 through February 2019 and the lack of specific training as to how to deal with a handcuffed individual who continues to kick, flail and resist does serve to mitigate the imposition of the discharge penalty.

Officer Brazeau failed to recognize that his actions on December 29, 2016 violated the Department's Use of Force Policy. Therefore, the Arbitrator rejects the Veteran's plea that the year of his removal from service and the loss of income he suffered as a result of his inability to take advantage of extra earning opportunities amounting to approximately $20,000 are sufficient punishment for his action on December 29, 2016.

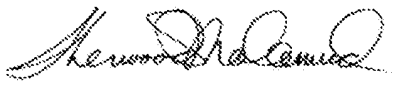
There is a Departmental need that Officer Brazeau understand that his conduct violated the Deparment's Use of Force Policy. To accomplish that goal, the Arbitrator relies on the Department's Discipline matrix to impose the most severe disciplinary penalty short of discharge, an 80-hour suspension. The Arbitrator awards that the recommendation to terminate the Veteran's employment with the Minneapolis Police Department be set aside and reduced to an 80-hour suspension.

In addition, the Arbitrator directs in this award that prior to the assignment of Officer Brazeau to full enforcement duties, the Department provide him with training either individually or in the context of departmental training on how to control handcuffed individuals who continue to fail and kick at the arresting officers in the variety of factual circumstances that an officer may face. In the Award, the Arbitrator directs that his training occur no later than 90 calendar days from the issuance of this Award.

The Arbitrator agrees with the Department's insistence that officers employ judgment in carrying out their duties. In this case, the absence of the use of judgment by Brazeau, is not a matter of second-guessing or 20/20 hindsight.

Prevailing Party Status

The Arbitrator concludes that the Veteran is the prevailing party. In the above analysis, the Arbitrator concludes that the City did not have just cause to discharge the Veteran. It does have just cause to discipline the Veteran with an 80-hour suspension. The statute specifies that the Veteran prevails if the discharge decision is set aside.



Dated: October 17, 2019.

Sherwood Malamud, Arbitrator

IN THE MATTER OF ARBITRATION	**OPINION & AWARD**
-between-	
THE POLICE OFFICERS' FEDERATION of MINNEAPOLIS	**Grievance Arbitration**
-and-	**Re: Employee Discipline**
THE CITY of MINNEAPOLIS MINNEAPOLIS, MINNESOTA	**Before: Jay C. Fogelberg Neutral Arbitrator**

Representation-

For the Employer: Valerie Darling, Assistant City Attorney
Trina Chernos, Assistant City Attorney

For the Federation: Kevin M. Beck, Attorney

Statement of Jurisdiction & Uncontested Facts-

The Collective Bargaining Agreement duly executed by the parties provides, in Article 11, for an appeal to binding arbitration of those disputes that remain unresolved after being processed through the initial steps of the procedure. A formal complaint was submitted by the Union on behalf of the Grievant on July 31, 2019, alleging that the Employer lacked just cause for terminating the Grievant's employment. Eventually, the matter was

appealed to binding arbitration when the parties were unable to satisfactorily resolve their dispute during discussions at the intermittent steps.

The undersigned was then selected from a panel of neutrals mutually agreed upon by the parties, and a hearing was convened in Minneapolis on May 20, 2020. At the conclusion of the proceedings, the parties agreed to submit written summary arguments which were received on June 24, 2020. Thereafter, the hearing was deemed officially closed.

The parties have stipulated to the following statement of the issue.

The Issue-

Was the Grievant's dismissal from the Minneapolis Police Department for just cause? If not, what shall the appropriate remedy be?

Preliminary Statement of the Facts-

The record developed during the course of the proceedings indicates that the Grievant, Mark Bohnsack has been a licensed peace officer on the City of Minneapolis' Police Force ("City," "Employer," or "MPD") for approximately the past twenty years. As such, he is a member of the Minneapolis Police Officers Federation ("Federation," "MPOF" or "Union") who represents all sworn law enforcement personnel employed by the City

save for those appointed to positions of Chief of Police, Assistant Chief of Police, Deputy Chief, Inspector and Commander. Together, the parties have negotiated and executed a collective bargaining agreement covering terms and conditions of employment (Joint Ex. 1).

At the time of the incident, the Grievant was assigned to the 4th Precinct located in North Minneapolis where he had served for nearly all of his career with the force. On November 24, 2018, while on duty along with his partner, Officer Brandy Steberg, it was decided that they would play a "joke" on a fellow officer, Kris Thompson, who was also assigned to the 4th. The evidence demonstrates that Officer Thompson had a reputation in the precinct as a "clean freak" – one who was consistently observed cleaning up and straightening out the facility when the opportunity presented itself. On or just prior to that day, Officer Thompson had erected and decorated a Christmas tree in the precinct's main lobby as was her practice each year.[1] Not long thereafter, Bohnsack and Steberg gathered pieces of trash that were located in the back seat of their squad car along with a few other items they found in a nearby alley and proceeded to place them on the holiday tree. In all, there were approximately a half dozen items added. They consisted of (among others) a package of menthol cigarettes, an

[1] The 4th shares space with a community center established to serve as a gathering place for residents who live in the area to conduct meetings, activities, etc.

empty can of malt liquor, a paper cup from "Popeye's Kitchen," wrappers of "Takis" and "Funyans" and some police crime scene tape. Shortly thereafter a member of the public, and the north side community, noticed the tree's décor while at the facility and took a picture of it. The photo was then posted on social media. Soon it became a story produced on local news outlets as well as nationally and internationally.

Once the Department's leadership as well as the Mayor learned of the incident via social media posts, the Grievant was placed on administrative paid leave pending the outcome of an internal investigation. Ultimately it was determined that the actions of Officers Bohnsack and Steberg warranted termination for their "....multiple poor decisions that [he] made over a protracted time period," in violation of the MPD's Professional Code of Conduct, that was "racially derogatory and offensive and [that was] against department core values" (City's Ex. H).

Thereafter, in response the Federation filed a written complaint on July 31, 2019, with the Employer alleging that Officer Bohnsack's dismissal lacked just cause and seeking a make whole remedy (Department's Ex. J).

Eventually, the matter was appealed to binding arbitration when the parties were unable to reach a settlement of the dispute.

Relevant Contract & Policy Provisions-

From the Master Agreement:

Article 12
Discipline

Section 12.01 The City, through the Chief of the Minneapolis Police Department, will discipline employees who have completed the required probationary period only for just cause.....

From the City's Rules & the Department's Code of Conduct:

Department Code of Conduct
Section 5-105

A. General

* * *

2. Employees shall conduct themselves in the buildings and offices of the Department in a manner which would not discredit the Department..

* * *

4. Employees shall use reasonable judgment in carrying out their duties and responsibilities. They need t weigh the consequences of their actions...

5. Employees shall be decorous in their language and conduct. They shall refrain from actions or words that bring discredit to the Department...

6. Employees shall not display material that may be considered discriminatory, derogatory, or biased in or on

City property. Specifically, discriminatory, derogatory or biased materials regarding race, color, creed, religion, ancestry, national origin, sex, affection preference, disability, age, martial status, public assistance, or familial housing are prohibited. Such materials include, but are not limited to, calendars, cartoons, and posters.

Positions of the Parties-

The **CITY** takes the position in this matter that Officer Bohnsack's dismissal was for just cause. In support of their claim, the Department notes that by accepting the badge, Minneapolis police officers swear to uphold the Department's Code of Ethics to protect and serve the community through fair and impartial policing. Indeed, the Grievant was well aware of this requirement as a member of the force and yet the Employer's investigation resulted in a finding of multiple violations.

The City offers as undisputed fact, that Officer Bohnsack had been trained repeatedly on procedural justice skills and how police interactions with the public shape their perception of the Department. In this instance, however, his conduct on the day in question was a serious misstep resulting in damage to MPD's reputation and pain to the City's north side community he served.

The Employer maintains that Grievant's and his partner's decision to

place racially stereotypical trash items on a Christmas tree in the 4th Precinct's public lobby, was not only disrespectful but served to reignite past trauma within the community involving the 4th and the citizens it serves - the majority of whom are African American. Many who reside in the area were incensed by the so-call "prank" viewing it as racist and hurtful.

The Employer maintains that not only did Officers Bohnsack and Steberg's actions garner an extraordinary amount of attention to the Department's reputation on the North side, the event went "viral" through local, national and even international exposure via the media.

In summary, the Department argues that the Grievant's actions irretrievably broke the trust of the public that is so very important with a police force. What he and his partner did on November 24, 2018, can only be perceived as racist which cannot be tolerated and most certainly not condoned in community and the City in general. The published Code of Ethics require police personnel to recognize the badge of their office as a "symbol of public faith" and accept it as a "public trust." Policing, is also a very visible profession and the Department's image is extremely important in its relation to those whom it serves. For these reasons then, they seek a denial of the grievance in its entirety.

Conversely, the **FEDERATION** takes the position that the termination of Officer Bohnsack was excessive and therefore unjust under the terms of the parties' labor agreement. In support of their claim, the Union argues that the Grievant has acquired a lengthy and impeccable work record over twenty years with the Department. During that time he has been the recipient of numerous honors and accolades, while earning positive marks from superiors on his annual performance evaluations.

The MPOF notes that he has taken responsibility for his actions, and has acknowledged his wrong doing in connection with the incident once he was able to "look back on it." Further, the Union claims that he was completely cooperative with the internal affairs investigation and has accepted responsibility for his actions which he now acknowledges were a violation of the Code of Conduct.

The MPF argues however, that the penalty imposed is excessive when the Grievant's excellent work record is taken into consideration. This they claim, was not done by the Department in the course of their deliberations. Discipline, in the Federation's view, should be constructive and corrective, not punitive but that is precisely what Officer Bohnsack's firing is in this instance.

In addition, and importantly, the Union maintains that the Employer cannot demonstrate that the Grievant's actions were deliberately intended to be racial or made with the knowledge that they would have an adverse impact on the community, the Department or his fellow officers.

Finally, the Federation claims that the Employer engaged in desperate treatment of this employee when they effectively terminated him. According to the MPOF the evidence demonstrates that other officers convicted of similar infractions received discipline not nearly as severe as that issued to the Grievant.

Accordingly, for the above-stated reasons, they ask that the grievance be sustained and Officer Bohnsack be returned to work and made whole.

Analysis of the Evidence-

In a disciplinary matter such as this, it is nearly universal that management first establish the accused employee is indeed guilty as charged. Should that be accomplished, they then need to demonstrate that the discipline administered was fair and reasonable when all relevant

factors are considered (assuming, of course, that there is no language in the labor agreement that limits a neutral's authority to review the penalty imposed). In this instance however, the initial evidentiary obligations of the City have been diminished by the unrefuted fact that the Grievant has readily and repeatedly taken ownership of the incident that lies at the core of this dispute.

The record shows that Officers Steberg and Bohnsack each stated more than once in the course of being interviewed by IA that their lone motivation for the "prank" was harmless and directed solely to Officer Thompson. There was, according to both of them, "no intent at all" to be discriminatory towards the African American community they served, nor were their actions driven by racism or to be considered insensitive in any manner. Rather, they maintained that they were simply "playing a joke on a coworker" that they hand known for over 20 years (City's Exs. 12 & 13).

The preponderant evidence demonstrates that while the motive may have been void of any ill will, it was clearly not viewed that way by the general population. Police Chief Arradondo testified that both he and the mayor considered the display to be discriminatory, derogatory and/or biased and that he had heard from many others – including elected officials

and members of the public, who had the same reaction.[2] Furthermore, it was revealed the Administration received a message from other law enforcement personnel in the Department who claimed that "this is not who we are." Additionally, it is noted that the MPD's Code of Conduct does not address intent so much as it speaks to the adverse impact an officer's actions may have on the public's perception of the police force as a whole. In this regard, using modern day vernacular, once news of the event reached social media, it went "viral."

I am satisfied that Officer Bohnsack's conduct was not intended to have the adverse reaction that it did and that he and his partner were, as they stated, seeking to play a joke that was intended for only one other fellow officer.[3] At the same time however, their conduct ran contrary to the training he had more recently received. Furthermore, he had worked out of the 4th Precinct nearly his entire career and should have had a heightened awareness of the adverse publicity such a prank could cause – particularly in light of the Jamal Clark incident. It is not unreasonable to conclude that the events of November 24, 2018, could be considered a breach of the

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[2] At hearing, the Employer's Director of Communications John Elder testified without challenge that the public's reaction was "monumental;" that the impact of the event was "significantly negative," and; that it was "very detrimental" to the Department.

[3] "Pranking" as it is often referred to by members of law enforcement, is not uncommon and often serves as something of a release from an otherwise highly stressful occupation.

public's trust which had been given high priority with the induction of the new Police Chief only a few years earlier (Employer's Ex. L).

In the final analysis the actions of the two officers on the day in question occurred without giving any thought to the adverse consequences that followed which were reasonably predictable. The "hot button" topic that has been in the public's eye – both locally and nationally - over the past several years is about biased or partial transgressions committed by certain police officers. Beyond a doubt, in my judgment, the Grievant's misconduct warranted discipline.

In light of the foregoing, the singular issue remaining concerns the fairness of the discipline meted out by the Administration. In connection with this aspect of the case, I find more than sufficient evidence militating against the harsh penalty that was imposed.

When considering this aspect of a disciplinary dispute, arbitrators often look for guidance by examining such factors as the grievant's work history, the investigatory procedure undertaken by the employer (due process), whether other employees have been disciplined for similar misconduct, and (assuming their adherence to the concept of progressive discipline) whether the penalty was excessive under the circumstances.

While not dispositive of this matter altogether, I find City's initial

reaction to the Grievant's conduct - that it was appalling and warranted his immediate termination – something of a rush to judgment without first carefully considering all the evidence. More particularly the following facts elicited from the record support this conclusion:

- Chief Arradondo testified that soon after the tree decoratioins came to light, he received a message from Mayor Frey's office who was upset over the incident and wanted the two officers "fired by noon" that day.

- Within a few days following the incident the Chief issued a news release concluding that the conduct of the two officers was "racially insensitive" and that he was "ashamed and appalled" by their behavior. This occurred prior to either officer being given an opportunity to respond. Their *Garrity* statements were not taken until nearly two months later, at which time they were able to offer their side of the events.

- While it is certain that at the time both Chief Arradondo and the mayor were under significant political pressure and from the public as well, the investigation and subsequent process raises questions as to whether the Administration had already determined the fate of the Grievant well in advance of his formal termination.

- Officer Thompson was never interviewed as a part of the Department's investigatory process. At hearing she testified that she had worked with Bohnsack for the majority of her career, and while she was not humored by his actions relative to the tree trimming events, she added that she thought highly of his police work stating "I would follow him into battle" any time.

- Similarly, neither 4th Precinct Inspector at the time Aaron Biard nor Lt. Chris House were interviewed as part of the investigation into the Grievant's misconduct. This in spite of the fact both were Officer Bohnsack's supervisors with direct involvement in

the matter and who could have provided information that was related to the events of November 24th (Union Exs. 4 & 5).

- There is no evidence in the record that the Chief was debriefed following the Grievant's *Laudermill* hearing conducted in late May last year nor received any communication regarding the discipline panel's findings chaired by Deputy Chief Fors, contrary to the purpose of the *Laudermill* hearing and the revised disciplinary process outlined in the "Overview of the Discipline Process" (see: the Federation's Exhibit 17).

- The focus of the Grievant's misconduct was the racially insensitive litter placed on the Christmas tree. However, the décor also included a small bottle of vodka, two cans of regular beer and two bags of chips, none of which are intrinsically stereotypical. While the City's emphasis was on four or five inflammatory items placed on the tree, the facts indicate that there were other pieces of garbage put there as well that were ignored and apparently not considered as part of the Department's inquiry.

A wealth of cases stands for the proposition that an employer may be justified in imposing a penalty that is short of termination if he/she possesses a lengthy, credible work record as opposed to one whose length of service is relatively brief, or whose job performance is marred by other discipline. The former is entitled to heightened consideration as they are presumed to be capeable of a satisfactory performance if given the opportunity and have a greater investment in their job. Conversely, the latter who has been around for only a short time may have less to lose. The administration of a

disciplinary system without making allowances for length of service and/or job performance has repeatedly resulted in the termination being overturned.

The record shows that Grievant's lengthy work record consisting of some 20 years with the Department as a patrol officer, has been void of any formal discipline and no recorded incidents of biased or partial policing. Indeed, it has been characterized as exemplary by his supervisors. The MPOF submitted Officer Performance Appraisals, dating back to 2012, demonstrating that overall he has consistently earned high grades, receiving either "outstanding" or "satisfactory" marks within the four separate categories delineated (Federation Ex. 2). Displaying a "positive attitude," being "looked upon as a leader in confronting the most challenging issues," knowledge of his job, "successfully deals with people from a wide range of cultures on a daily basis," and displaying "excellent judgment and decision-making" are indicative of the reviewing supervisors' comments (*id*).

In his most recent evaluation authored by Lt. Mark Montgomery (who is African American) Bohnsacck was given thee highest possible overall rating of "Exceeds." In doing so the reviewing supervisor noted that the Grievant "shows an outstanding sensitivity to the needs, feelings and capabiities of other people," and "*consistently practices Procedural Justice*

in dealing with people." Lt. Montgomery further commented that the officer, "....acts in ways that builds or enhances trust" making it "easier to form alliances with individuals and groups" (Union's Exs. 2 & 4). The record holds evidence of similar positive comments made by other supervisors in his earlier performance evaluations where he has been referred to as being "*consistently one of our top statistical performers* in proactive work" (*id.*; emphasis added).

Additionally it was shown that the Grievant has been a multiple receipient of departmental awards and commendations including the Medal of Valor in 2003 for demonstrating "outstanding heroism...unselfishness, courage....professionalism and self sacrifice" in the face of considerable risk to himself (*id.*).

Bundled together, Mr. Bohnsack's clearly outstanding and lengthy work record in the Department (and more particularly in the 4th Precinct where he has worked throughout his career) is most significant serving as strong evidence mitigating against his termination.

The Federation has also raised the defense of desperate treatment in this instance. Desperate treatment normally exists when employees engage in the same type of (alleged) misconduct under the same or substantially similar circumstances in the presence of the same or substantially similar

mitigating factors but are assessed with significantly different penalties.

The Union offered three examples where members of the force were charged with comparable infractions but received considerably less discipline than what was issued to the Grievant. Neither the Inspector serving the Precinct at the time of the incident (Biard) nor Lt. House have been terminated by the MPD as a consequence. Both were supervisors who had viewed the Christmas tree after it had been remodeled by Officers Steberg and Bohnsack, but took no disciplinary action against them.

In April of this year, another member of the force, Commander Kim Lund Voss, posted a picture of a t-shirt on her Facebook page that read: "Minneapolis Police Homocide [*sp*] Division; Our Day Starts When Yours Ends." It included a drawing featuring a chalk outline of a body (Union's Ex. 12). The post caused something of an "uproar" in the media while receiving rebukes from Chief Arrandondo as well as the NAACP who called it "extremely insensitive" (Union's Exs. 12 & 13). Ms. Voss however, was not discharged from the force as a consequence.

All three examples listed here occurred after the Chief had been appointed and had issued his Visioin Statement to the Department.

Award-

For the reasons set forth above, I conclude that there exists sufficient evidence in the record demonstrating clear misconduct warranting discipline of the Grievant. At the same time however, relevant documentation and testimony adequately supports a penalty short of termination for a senior member of the MPD who has otherwise compiled an admirable record of service.

Contrary to the City's assertion, I find that Officer Bohnsack has taken responsibility for his actions and the harm they caused. Nor do I concur with the Administration's posit that he is beyond rehabilitation via a lower level of discipline or that his many years in the 4th Precinct are an "aggravating factor" rather than a mitigating one. While his conduct on the day in question was clearly unprofessional and thoughtless, his outstanding work record along with other mitigating factors has weighed heavily on the decision reached here supporting a reduced penalty - one that is constructive – one that might serve to correct the behavior in issue rather than simply to punish. In the final analysis I conclude that his retention on the force should hopefully benefit both the Grievant and the Department going forward.

Officer Bohnsack's grievance is therefore sustained in part to the

limited extent that his dismissal be forthwith reduced to a 320 hour suspension. Accordingly, the City is to forthwith directed reinstate the Grievant to his former status as a police officer in the MPD and reimburse him for the difference between the wages and attendant benefits (if any) originally withheld and the modified discipline ordered here. Their financial obligation however, shall be offset by any income he may have received while away from work beyond the award made here.

I will retain jurisdiction in this matter for the sole purpose of resolving any dispute that may arise between the parties in connection with the implementation of the award.

Respectfully submitted this 5th day of August, 2020.

Jay C. Fogelberg, Neutral Arbitrator

EXHIBIT

133

IN RE ARBITRATION BETWEEN:

Arbitrator Stephen F. Befort

Police Officers Federation of Minneapolis,

and

UNION'S POST-HEARING BRIEF

City of Minneapolis.

APPEARANCES

FOR THE UNION:
Kevin M. Beck, Kelly & Lemmons, P.A.
Lt. Robert J. Kroll, President P.O.F.M.
Blayne Lehner, Grievant

FOR THE EMPLOYER:
Trina Chernos, Assistant City Attorney
Bruce Folkens, Deputy Chief

PRELIMINARY STATEMENT

The hearing was held August 16 and September 2, 2016, at Minneapolis City Hall in Minneapolis, MN. The parties submitted post-hearing briefs via e-mail on September 16, 2016, at which point the record was closed.

ISSUE

Whether the Employer had just cause to discharge the Grievant and, if not, what is the appropriate remedy?

BACKGROUND

On August 4, 2014, Officer Blayne Lehner and his partner, Officer Marcus Lukes were dispatched to an apartment building on Blaisdell Avenue on a domestic disturbance between two females, later identified as Amy Nelson and Missy Desjarlais. When the officers arrived at the apartment, the two females were screaming at each other so they

were separated—Officer Lukes stayed with Ms. Desjarlais who remained in the apartment in order to pack her property and move out; Officer Lehner took Ms. Nelson to the hallway outside of the apartment. Officer Lehner testified it was a tricky situation because they wanted the females separated but also wanted Ms. Nelson to stay within view of the apartment so that she could ensure her property was not taken. Video footage shows an agitated Ms. Nelson yelling at Officer Lehner and at other residents of the apartment building, including Ms. Desjarlais's teenage daughter who can be seen on the video crying throughout the ordeal. Officer Lehner's testimony mirrored his Garrity statement where he described Ms. Nelson's demeanor as "aggressive":

> Amy was out of control. She was so-, she was loud enough in her apartment that actually the neighbors who were what 20, maybe 50 feet down the hallway actually came out because they heard the screaming and yelling. . . . [W]hen it came to her verbal actions, it was every cuss word you can think of. You know like get the fuck out of my apartment. You know fuck her. You guys have no reason to be here. . . . [S]he would just get out of control. And she would be constantly yelling at the kids who were in the hallway trying to get this stuff moved and trying to yell from out in the hallway past me into her girlfriend to try to intimidate her inside to telling her you don't have to move your stuff out one minute to get the fuck outta here you worthless piece of shit.

City Ex. 17, at 3:45-4:13. Office Lukes described Ms. Nelson's demeanor as follows: "outburst, yelling, screaming, swearing" and "blatant outbursts constantly" while having "no regard for the children that were there." City Ex. 21, at 3:14-19.

The video shows several residents help Ms. Desjarlais remove her property from the apartment. At one point, Ms. Nelson tried to move past Officer Lehner and back into the apartment when he put his hand near her stomach to prevent her from going in. She

knocked his hand away and continued toward the apartment door. Officer Lehner then put his hand up closer to her face and told her to stop. Ms. Nelson knocked his hand away again while attempting to gain access to the apartment. While Officer Lehner kept Ms. Nelson in the hallway, Ms. Desjarlais continued to move her property out. At one point, Ms. Nelson can be seen grabbing a sweater and throwing it back into the apartment. After Ms. Desjarlais had removed her property and left the apartment, Officer Lehner instructed Ms. Nelson to go inside to see if there was anything that she wanted removed from the apartment. Ms. Nelson can be seen entering the apartment and a short time later a pedestal fan is thrown into the hallway, causing it to break into pieces. Officers Lehner and Lukes then directed Ms. Nelson to remain in her apartment until Ms. Desjarlais had left. Officer Lehner testified they did this for safety reasons. Yet, within seconds of closing the door, Ms. Nelson opened it back up. Officer Lukes again directed her to stay in the apartment until Ms. Desjarlais had left. Officer Lehner testified they could hear Ms. Nelson just behind the doorway and could tell she was looking through the peephole. Accordingly, Officer Lukes held the door shut. The officers then waited for a period of time. The video shows that within seconds of the officers turning the corner to enter the stairwell, Ms. Nelson exited the apartment and proceeded downstairs.

Once downstairs, Ms. Nelson immediately walked to the exit door. Ms. Desjarlais was outside placing her property into her car. In response, Officer Lehner moved in front of her to block her exit. Officer Lehner testified that this too was for safety reasons. While in the doorway, Ms. Nelson was on the phone and also yelling towards Ms. Desjarlais. Ms.

Nelson did not comply with Officer Lehner's directives to go back inside and did not even acknowledge Officer Lehner's presence. Officer Lehner pushed Ms. Nelson inside the foyer to create space, to get her inside so that the door could close, and to bring her attention to Officer Lehner. Ms. Nelson slowly stumbled back and landed on the stairs in a seated position but continued to talk on the phone. Ms. Nelson did not comply with Officer Lehner's repeated commands to put the phone down and to turn around because she was under arrest for disorderly conduct.[1] In fact, just as she acted in the threshold of the door, she did not acknowledge Officer Lehner's presence. Accordingly, he knocked the phone out of her hands. Officer Lehner testified this was done to remove a distraction so that she would focus on him. Officer Lehner continued to tell her to turn around to be arrested. In response, Ms. Nelson did not turn around but instead attempted to stand up and, in doing so, grabbed Officer Lehner's hand. Officer Lehner's immediate reaction was to push Ms. Nelson with his free hand in the upper chest area to keep her on the ground. Officer Lehner did not grab her by the throat and he did not choke her. The video shows an open hand push to the upper chest area. Ms. Nelson fell back to the ground but continued to not comply with Officer Lehner's directives to turn over to be arrested. It was at this point that Officer Lehner heard somebody say "please don't arrest her, we'll take care of her." Officer Lehner decided not to move forward with the arrest or, to "unarrest" her. Officer Lehner

[1] Whoever does any of the following in a public or private place . . . knowing, or having reasonable grounds to know that it will, or will tend to, alarm, anger or disturb others . . . is guilty of disorderly conduct, which is a misdemeanor: . . . engages in offensive, obscene, abusive, boisterous, or noisy conduct or in offensive, obscene, or abusive language tending reasonably to arouse alarm, anger, or resentment in others. Minn. Stat. § 609.72, subd. 1(3).

testified MPD officers are trained to use their discretion in effecting arrests and that "unarresting" is not uncommon and is, in fact, trained by the MPD at the Academy. Shortly thereafter, other apartment residents can be seen walking in and taking Ms. Nelson with them. Two days later, on August 6, 2014, property manager Alyssa Kiffmeyer filed a complaint with the MPD. City Ex. 15, at 6. Officer Lehner continued to work as a MPD police officer for the next 13 months until placed on administrative leave September 2, 2015. City Ex. 38. He was terminated four months later on January 22, 2016.

LEGAL STANDARD

There are two "proof" issues in discipline and discharge cases—the first involves proof of wrongdoing; the second, assuming guilt of wrongdoing is established, concerns the question of whether the punishment assessed by management should be upheld or modified. Elkouri, *How Arbitration Works*, 7th Ed., at 15-23 (hereafter "*Elkouri*"). If the employer meets its first burden, it must then prove that discharge was the appropriate level of discipline.[2]

The CBA protects job security by limiting the employer's power to discipline and discharge—specifically, § 4.1 states that an employee can be disciplined "only for just cause." City Ex. 1, p. 4. Although just cause is not a precise concept, two principles central to the just cause analysis are employed by "all arbitrators"—due process and progressive

[2] In discharge cases, the quantum of proof is on the employer to prove by "preponderance of the evidence," "clear and convincing evidence," or "evidence beyond a reasonable doubt." *Id.* at 15-24-25. The appropriate quantum in this discipline case is "clear and convincing evidence"; however, this brief refers to a "preponderance of the evidence" standard because the City has failed to meet even this lower burden of proof.

discipline. Norman Brand, *Discipline and Discharge in Arbitration*, at 30 (2nd ed. 2008) (hereafter "*Discipline and Discharge*").

It is "axiomatic that the degree of penalty should be in keeping with the seriousness of the offense." *Elkouri*, at 15-40 (quoting *Capital Airlines*, 25 LA 13, 16 (Stowe, 1955). Discipline is considered excessive if it is "out of step with the principles of progressive discipline, if it is punitive rather than corrective, or if mitigating circumstances were ignored." *Id.* at 15-43. Arbitrators often modify disciplinary penalties imposed by management when there are mitigating circumstances that lead the arbitrator to conclude that the penalty is too severe or that the employer lacks, or has failed to follow, progressive discipline. *Id.* Moreover, arbitrators are "likely to set aside or reduce penalties" when the employee had not been previously reprimanded and/or warned that his/her conduct would result in discharge. *Id.* The CBA specifically authorizes the arbitrator to fashion "any relief" he/she feels is appropriate. City Ex. 1.

ARGUMENT

The City failed to meet its burden of proof that Officer Lehner violated MPD policies 5-303, 5-306, or 5-105(15) on August 4, 2014. The City made this simple matter, almost all of which is captured on video, convoluted and confusing by stretching and twisting facts and policies in its desperate attempt to justify the discharge of a long-term and valuable police officer. The City ignored its own policies when it failed to engage in the objective force analysis required by 5-303; it invented an arbitrary and never-before-used definition of "takedown technique" to justify its alleged violation of 5-306; and it

failed to address in any manner the clear credibility concerns regarding the language allegation in 5-105(15). By doing so, the City improperly attempts to shift the burden to the Federation to prove that Officer Lehner did *not* violate the policies. Although such burden shifting is improper, the evidence provided by the Federation does, in fact, prove that Officer Lehner did not violate MPD Policy 5-303 or 5-306. To the contrary, the evidence demonstrates that Officer Lehner complied with MPD policies and training on August 4, 2014. With regard to the language allegation, the evidence falls far short of even the low standard of preponderance of the evidence because of the conflicting factual record and inherent unreliability of the statements from Ms. Nelson and Ms. Essaw. Accordingly, the grievance should be sustained and discharge reversed.

As a threshold matter, because the City raised for the first time at the hearing a fourth allegation of a violation of the "code of ethics," it should be disregarded in its entirety and will not be addressed in this brief. [3] The code of ethics allegation was not communicated to Officer Lehner or the Union prior to the hearing. The code of ethics

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[3] An employee is "entitled to receive timely information regarding the reason for discipline with sufficient detail to allow her an opportunity to respond." *Discipline and Discharge*, at 48. "Surprise and lack of adequate notice about the basis for disciplinary action generally prejudices the union and the employee." *Id.* Accordingly, "[s]pecific notice must be given in sufficient time to allow the union and the employee to prepare for an arbitration." *Id.* When this occurs, arbitrators have "disallowed the presentation of issues not raised until the hearing on the ground that the other party has been surprised or otherwise unfairly disadvantaged." *Elkouri*, at 7-8. "If a new issue arises at arbitration, an arbitrator ordinarily will refuse to consider the new matter over the objection of the other party." *Id.* The underlying rationale for this arbitration principle was succinctly explained by one arbitrator: "It is axiomatic that an employer's defense in a discipline case must rise or fall on the initial reasons provided the employee. Other reasons can't be added later when the case reaches arbitration merely in an attempt to strengthen the employer's defense." *Chevron-Phillips Chem. Co.*, 120 LA 1065, 1073 (Neas, 2005).

allegation was not included in the first Notice of Discipline Panel Meeting (City Ex. 3); the first *Loudermill* (*see* City Ex. 4); the second Notice of Discipline Panel Meeting (City Ex. 5); the second *Loudermill* (*see* City Ex. 6); the OPCR Panel Recommendation (City Ex. 7); the discipline panel memo from Insp. Loining (City Ex. 8); the Discipline Worksheet (City Ex. 9); or the Discharge, Suspension or Involuntary Demotion Form given to Officer Lehner by Chief Harteau on January 22, 2016 (City Ex. 10). This is significant because each of these exhibits specifically listed *all* of the alleged policy violations as 5-303, 5-306, and 5-105(15). The only document that references the Code of Ethics is a memorandum from Chief Harteau to "File" with a copy to Chief Harteau. Said memo was not provided to Officer Lehner before, or at the time of, discharge and he testified that the first time he saw the memo was at the arbitration hearing.[4] That the Union and Grievant were prejudiced by this new basis for discharge is highlighted by the Federation's data practices request for similar discipline related to violations of "Policies 5-303; 5-306; and 5-105(15)." *See* Union Ex. 8. The allegation that Officer Lehner violated the code of ethics should be ignored.

I. OFFICER LEHNER DID NOT VIOLATE MPD POLICY 5-306 BECAUSE A PUSH IS NOT A TAKEDOWN TECHNIQUE.

The sole basis for sustaining the failure to report force allegation is that the second push was a "takedown technique." DC Folkens conceded that the first push was not a

[4] The City's argument that the Union could have requested it is a red herring. If the code of ethics formed a basis for discipline, it must be communicated to the grievant and the Federation. This is unfortunately yet another example of the City's improper attempt to shift its burden of proof onto the Federation.

"takedown technique" and that the second push was not a "controlled take down". Yet, DC Folkens then attempted to categorize the second push as a "takedown technique." DC Folkens testimony that one push is a "takedown technique" while the other is not defies logic as well as MPD policies and training.

The video speaks for itself. After pushing Ms. Nelson from the threshold of the doorway, Ms. Nelson slowly stumbled backwards and landed in a seated position on the steps. After refusing to comply with Officer Lehner's directive to put down the phone, he batted it out of her hand. She attempted to get up. In doing so, the video shows that she grabbed Officer Lehner's right hand. He immediately reacted by using his free hand to push her with an open hand to the upper chest area. This is not a takedown technique according to the plain language of the MPD Policy 5-300 and the Use of Force Continuum, it is not a takedown technique according to MPD practice, and it is not a takedown technique as trained by the MPD.

The City cannot have it both ways—a push is either a "takedown technique" or it is not. If the City wants to define a takedown technique to include a push it could do so, but it has not. As it stands, the use of force policy does not define "takedown technique" or "takedown maneuver" nor does it define pushing or shoving. *See* City Ex. 32, at 1-2. The MPD's Defense and Control Response Training Guide (hereafter the "Use of Force Continuum") does, however, define a "controlled take down" as "[p]hysically directing a person to the ground by utilizing joint manipulation techniques and leverage that has no to low injury potential." *Id.* at 8. Lt. Anderson testified that because there is no distinction

between a takedown technique and a controlled takedown, the definition for controlled takedown is what is taught as a "takedown technique" through MPD training. Lt. Anderson testified that the MPD trains the following takedown techniques: armbar, iron wrist hold, and neck restraint, all of which are designed guide an individual to the ground. Lt. Anderson further testified that the MPD does not train pushing as a "takedown technique" because a push is not a takedown technique. This appears to be common knowledge within the MPD: when Officer Lukes was asked if Officer Lehner used a "takedown technique," he stated that it was not a takedown technique and further stated that if "somebody is close to me I'd push somebody back." City Ex. 21, at 9:5-16. Lt. Witzman also testified that pushing is not a takedown technique.

This is significant because MPD Policy 5-306 requires a CAPRS report (but no supervisor notification) if an officer use "Takedown Techniques" or "Chemical Agent Exposures." City Ex. 32. The City acknowledges that Officer Lehner's initial push and knocking the phone away was not reportable force. *See* City Ex. 8 ("he was required to complete a CAPRS Use of Force report based on the, "Take Down" maneuver . . . the other 2 instances of force [initial push and batting phone away] . . . did not meet the mandated Use of Force reporting criteria.") DC Folkens admitted at the hearing that the only way for the City to justify its sustained violation for failure to report was to categorize the second push as a "takedown technique". In turn, the City created a false and never-before-used definition of a "takedown technique" without any evidentiary support. The City offered no use of force training outlines or testimony from a use of force instructor. DC Folkens has

no specific experience as a use of force or defensive tactics instructor with MPD. The City has failed to meet its burden of proof that Officer Lehner violated MPD Policy 5-306.

Because there was no apparent injury, the evidence shows that Officer Lehner *followed* MPD Policy 5-306 when he did not write a CAPRS report for the second push. There is a clear inconsistency in the City's finding that the first push "did not meet the mandated Use of Force reporting criteria" but that the second push did. If a push is not reportable, then it is not reportable. In this case, if a push that causes a person to go from a standing position to a seated position is not a takedown technique, then a push to keep an individual from standing up is not a takedown technique. The policy does not define "takedown technique" and the evidence does not support the DC Folkens's arbitrary definition that runs contrary to MPD training. The Arbitrator should sustain the grievance and find that Officer Lehner did not violate MPD Policy 5-306.

II. OFFICER LEHNER COMPLIED WITH MPD USE OF FORCE POLICY 5-300 AND MPD TRAINING.

Use of force is governed by MPD Policy 5-303[5] and the MPD's Use of Force Continuum. The record shows that Officer Lehner complied MPD Policy 5-303, the Use of Force Continuum, and MPD training when he used a low level of force in an attempt to gain control of Ms. Nelson.[6] Considering the location and size of the room, Officer

[5] Police 5-303 expressly adopts the Supreme Court's holding in *Graham v. Connor*.

[6] Chief Harteau's testimony that Officer Lehner violated the use of force policy because he was trying to control the individual as opposed to the "situation" was nonsensical and out of touch with MPD policies and training. Ms. Nelson *was* the situation and said situation could not be controlled until Ms. Nelson was controlled. Stated differently, one cannot control a situation without controlling the person creating that situation. Chief Harteau's

Lehner's distance from Ms. Nelson, his special knowledge that she had previously had a knife, had been actively resistant by physically pushing his hand away, had repeatedly ignored officer directives, and that lower force had previously been ineffective and would likely be ineffective, Officer Lehner's use of a very low level of force by pushing Ms. Nelson complied with MPD Policy 5-300 *and* the Use of Force Continuum. *See* City Ex. 32.

Although there is no audio, the video of the entire incident shows Ms. Nelson to be repeatedly non-compliant and combative towards the other residents and police officers. It shows Officers Lehner and Lukes patiently addressing the domestic disturbance call and acting as intermediaries to enable Ms. Desjarlais and her young daughter to safely move out of the apartment. The City's attempts to portray Officer Lehner as angry and belligerent are not supported by the evidence.[7] Sgt. Tammy Werner, Officer Lehner's partner for five years, testified that he taught her "a lot about integrity" even though *she was his FTO*, he was one of the most even-headed officers she had worked with, and that he was never out of control. IA investigator Sgt. Walters recognized that Officers Lukes and Lehner "were very patient." City Ex. 21, at 4:23. One of the residents who witnessed the incident believed that "when [Ms. Nelson] hit [Officer Lehner] he could've popped her ass back, but he didn't do that." City Ex. 25, at 8:7-8. The video speaks for itself and shows that after

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position disregards the training and instruction MPD officers receive, and further underscores the City's desperate attempt to justify its quantum leap to discharge.

[7] Chief Harteau testified that Officer Lehner appeared angry as she fired him on January 22, 2016. While it is clearly understandable that an 18-year police officer would be upset in this circumstance, Chief Harteau's testimony lacked foundation as she admitted that Officer Lehner did not say anything to her.

dealing with Ms. Nelson for over 15 minutes, Officers Lehner and Lukes are not angry. In fact, they can be seen joking and laughing while standing in the hallway while ensuring that Ms. Nelson remained in the apartment.

The video also shows that each use of force was controlled and served a specific purpose. The first push created distance and put Ms. Nelson back inside the foyer and away from Ms. Desjarlais who was outside attempting to leave. It also allowed the exterior door to close. Knocking the phone from her hand removed it as a distraction so that Ms. Nelson would focus on Officer Lehner's commands and also removed a possible weapon. The second push kept Ms. Nelson on the ground so that Officer Lehner was able to have better control over her in general and specifically to arrest her.

Officer Lehner had multiple options of force at his disposal to gain control over Ms. Nelson but chose to use a level of force that all of the witnesses (with the exception Chief Harteau and DC Folkens) testified was a very low level use of force: he pushed Ms. Nelson with an open hand. The video does not corroborate what the City mulishly insisted was a "throat grab", but rather shows Officer Lehner push Ms. Nelson on the upper chest area with an open hand. Officer Lehner did not use a baton, Taser, or chemical irritant to gain compliance; he did not engage in what Lt. Witzman described as a "pain compliance" technique like applying pressure to nerve pressure points; he did not draw or point his service weapon;[8] Officer Lehner did not slap or punch Ms. Nelson with a closed fist; he did not kick Ms. Nelson; and, importantly, he did not repeatedly punch or kick Ms. Nelson

[8] Had Officer Lehner drawn his firearm and pointed it at Ms. Nelson, he would not have had to report it to a supervisor or in a CAPRS report. *See* City Ex. 32.

in a manner that would indicate anger. The record shows that Officer Lehner used low level open hand force in an attempt to control a combative and non-compliant subject. Officer Lehner's articulated reasons for each use of force shows that he used objectively reasonable force supported by the "facts and circumstances known to [Officer Lehner] at the time force was used." *See* City Ex. 32, at 1. Unfortunately, the City did not engage in an objective force analysis at any point in the disciplinary process.

If it had engaged in the analysis required by Policy 5-300, the only reasonable conclusion would be that the August 4 incident illustrates proper use of force and a textbook application of the Use of Force Continuum. For example, Chief Harteau and DC Folkens both agreed that officer "presence" did not diffuse the situation, as Ms. Nelson continued to have outbursts and yell and scream after the officers had arrived and had separated her from Ms. Desjarlais.[9] Moving up the continuum, Chief Harteau and DC Folkens both agreed that "verbalization" did not work, as Ms. Nelson repeatedly ignored the officers' commands and directives: did not comply with directives to calm down and stop yelling; did not comply with a directive from Officer Lehner to remain in the hallway and even attempted to physically force her way past Officer Lehner in order to enter the apartment by pushing his hand away twice; ignored the officers' commands to remain in her apartment to the point where Officer Lukes had to hold the door to the apartment shut in order to keep Ms. Nelson from exiting; after Officer Lukes held the door shut, Ms. Nelson exited the apartment within seconds after the officers entered the stairwell; once

[9] Officer Lehner testified that officer presence did work on Ms. Desjarlais who had been screaming at Ms. Nelson when they arrived but quickly calmed down.

downstairs in the threshold of the exterior door she ignored Officer Lehner's commands to go back inside; after being pushed she ignored Officer Lehner's directive to put down the phone; after the phone was knocked away Ms. Nelson ignored commands to roll on her stomach and instead attempted to stand up, again grabbing Officer Lehner.

Consequently, the record shows that, at a minimum, Ms. Nelson was "passively resistant"—defined as "the subject does not comply with verbal or physical control efforts, yet the subject does not attempt to defeat an officer's control efforts." City Ex. 32, at 2. Yet, the City never discussed whether Ms. Nelson was "active aggressive", "active resistant", or "passive resistant". *See* City Exs. 1-39. The evidence does support a finding that Ms. Nelson was actively resistant—defined as a subject "engaging in physical actions to make it more difficult for officers to achieve actual physical control"—when she twice knocked away Officer Lehner's hands while upstairs and grabbed Officer Lehner's hands prior to the second push. Active resistance authorizes an MPD officer to move up the Use of Force Continuum into the "yellow box".[10]

Because Ms. Nelson was at least passively resistant, the Use of Force Continuum authorized Officer Lehner to use joint manipulation, pressure points, and escort holds. *See* City Ex. 32, at 8. Lt. Witzman,[11] Sgt. Werner,[12] and Grievant all testified they would place

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[10] Whether Ms. Nelson was passively or actively resistant is not really an issue because Officer Lehner's conduct did not rise into the "yellow box". It does, however, show that Officer Lehner was authorized to use a higher use of force but that he "de-escalated" according to the continuum by "control[ling] with less force." *See* City Ex. 32, at 8.

[11] Lt. Witzman has 26 years' experience with the MPD almost all of which is as a "street cop", including nearly 20 years as a supervisor (13 as a lieutenant).

[12] Sgt. Werner has 21 years' experience with the MPD (three as a sergeant).

pushing or shoving above verbalization but below "joint manipulation, pressure points, [and] escort holds" on the Use of Force Continuum. Their testimony was echoed by Lt. Anderson, a 15-year MPD use of force instructor who helped draft the Use of Force Continuum. All three uses of force by Officer Lehner were therefore authorized under MPD Policy 5-300 and the Use of Force Continuum.

The City did not call a use of force witness. Instead, DC Folkens' testimony that Officer Lehner's force was unauthorized can be summed up as follows: at the time force was applied, Ms. Nelson was not "overtly attempting to thwart the officers"; she did not "appear to be aggressive in the entryway"; and the two handed shove was "forceful and violent". [13] Chief Harteau's testimony on the use of force was essentially that there was "nothing nice about" pushing Ms. Nelson, it was improper for Officer Lehner to try to control Ms. Nelson, and that Officer Lehner could not consider any of his previous knowledge of, or interaction with, Ms. Nelson. This testimony is indicative of the level of analysis and understanding (or lack thereof) applied by the City in its determination that force was excessive.

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[13] DC Folkens's testimony on the Use of Force Continuum exposed a logical inconsistency. He testified on cross-examination that Officer Lehner should have de-escalated as set out in the use of force continuum. He also testified that Officer Lehner could not consider escalating because escalation would only be possible if Ms. Nelson was actively resistant ("in the yellow"). However, de-escalation is similarly only an option on the use of force continuum, taking DC Folkens's testimony to its logical conclusion, when an individual is actively resistant and "in the yellow". *See* City Ex. 32. The City cannot have it both ways. Either Ms. Nelson was actively resistant and Officer Lehner could escalate or de-escalate or she was not actively resistant and neither analysis applies. This testimony provides another example of the City's failure to properly apply its policies or, stated differently, to apply its policies in an arbitrary manner towards Officer Lehner.

OPCR Panel

The OPCR panel provided no explanation of how it came to its conclusion that no force was necessary. First and foremost, the issue under the plain language of MPD Policy 5-300 is not whether force was *necessary* but whether force was *objectively reasonable*. To determine whether force was objectively reasonable "requires careful attention to the facts and circumstances of each case." City Ex. 32, at 2 (citing *Graham v. Connor*). Lt. Anderson stressed in his testimony the need to review the "totality of the circumstances" to determine whether force was appropriate.

The evidence shows that Officer Lehner's force was appropriate in light of the totality of the circumstances. The evidence further shows that the OPCR panel failed to consider any of the facts and circumstances. For instance, it did not address the factors set forth in *Graham v. Connor* as stated by MPD Policy 5-303; it did not analyze the facts and circumstances under the Use of Force Continuum; and it did not discuss MPD training on defense and control. Instead, the OPCR panel did precisely what the Supreme Court warned against in *Graham v. Connor* by judging Officer Lehner's conduct not from the perspective of a reasonable officer on the scene,[14] but with the 20/20 vision of hindsight—tellingly, that "the [OPCR] panel agrees that no force was necessary."

Moreover, the OPCR panel did not address whether Ms. Nelson's conduct was "active aggression," "active resistance", or "passive resistance", and it did not analyze

[14] The only other officer on the scene stated that Ms. Nelson was "very intoxicated, not listening to any verbal commands from officers . . . continually disobeyed verbal commands from myself [and] my partner" and that if "somebody is close to me I'd push somebody back." City Ex. 21, p. 8:32-35; 9:16.

whether Officer Lehner's conduct would be considered "rational and logical" as "supported by facts and circumstances known to an officer at the time force was used." City Ex. 32. In fact, the OPCR wholly failed to address any of the facts and circumstances known to Officer Lehner at the time of the force—notably, that Ms. Nelson had earlier pushed away Officer Lehner's hand, not just once but twice, as he tried to keep her separated from Ms. Desjarlais; Ms. Nelson's failure to comply with both officers' repeated commands to stay in her apartment or that Officer Lukes had to physically hold the apartment door closed to keep her from coming out; that Ms. Nelson was standing in the threshold of the doorway yelling at Ms. Desjarlais in very close proximity to Officer Lehner who had moved there to block her exit and maintain separation from Ms. Desjarlais; that Ms. Nelson refused to comply with Officer Lehner's directives to back away; and that Ms. Nelson refused to comply with Officer Lehner's instruction to put the phone down and turn around to be handcuffed. The OPCR panel's conclusory statement that there was a policy violation without any analysis or explanation falls far short of the City's burden of proof and the grievance should be sustained.

MPD Discipline Panel

Unfortunately, the lack of analysis continued at the discipline panel where Inspector Loining's memorandum on behalf of the discipline panel contained no analysis or discussion under Policy 5-303 (or *Graham v. Connor*), the Use of Force Continuum, or MPD training. *See* City Ex. 8. Instead, Insp. Loining's memo merely recited the incident as it appeared on video before concluding the allegations had merit and recommending

discharge. Like the OPCR panel, the discipline panel did not address Ms. Nelson's resistance and non-compliance with the officers' commands or the facts and circumstances known to Officer Lehner at the time force was used. Also like the OPCR panel, the discipline panel wholly failed to discuss the subject factors and special circumstances delineated in the Use of Force Continuum that an officer may consider when using force, such as location and size of the room; any special circumstances, including "distance from the subject [and] special knowledge"; or that an officer may "escalate when lower force was ineffective [or] lower force would likely be ineffective." *Id.*

Not surprisingly, the discipline worksheet in City Exhibit 9 contained no analysis or discussion of any mitigating factors such as prior work record, awards, or length of service. The last document in the discipline chain is Chief Harteau's minimal four-sentence memo, which also failed to discuss or explain how or why Officer Lehner's conduct was not objectively reasonable.

Arbitration Hearing

The dearth of analysis continued at the arbitration hearing, where the City's witnesses did not articulate why Officer Lehner's conduct was not objectively reasonable. DC Folkens testified that he reviewed the case file and, in essence, because Officer Lehner did not feel "threatened" no force could be used. Use of force instructor Lt. Brian Anderson and long-term MPD Lt. Ray Witzman both testified that MPD officers are trained to use force in circumstances even where they do not feel personally threatened. One such example is to affect an arrest, which is what Officer Lehner has repeatedly stated he was

attempting to do. Both DC Folkens and Chief Harteau took issue with the fact that Officer Lehner did not ultimately arrest[15] Ms. Nelson and did not make a move to effectuate an arrest—specifically, that he did not remove his handcuffs. Officer Lehner and Lt. Anderson testified, however, that officers are trained not to remove handcuffs until the suspect is under control because it disables one of the officer's hands and introduces a possible weapon into the scene. All of the witnesses agreed that Ms. Nelson was not under control. That Officer Lehner ultimately determined not to arrest Ms. Nelson should not be used against him as a basis for discipline—particularly in light of the MPD's emphasis on community relationships and de-escalation.

The record demonstrates that the City failed to engage in any analysis of whether Officer Lehner used objectively reasonable force on August 4, 2014. Instead, the record shows that the City made a pre-determined conclusion to discharge Officer Lehner and then merely went through the motions to justify its decision to discharge. In doing so, the City appears to have fully embraced Justice Potter's famous maxim—"I know it when I see it"—when it determined that Officer Lehner's force was excessive. *See Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964). This is insufficient to meet its burden of proof and the grievance should be sustained.

[15] Officer Lehner testified he "unarrested" Ms. Nelson, something he has done in his 18 years as an MPD officer and had been trained to do dating back to his time at the MPD Academy.

A. Chief Harteau's testimony should be given minimal weight.

Chief Harteau's testimony should be given little weight because it was self-serving, inconsistent, and contradictory to MPD policies and training. For example, she hyperbolically testified that Officer Lehner could not be reinstated because this incident "tarnished the badge" and dubiously linked the August 4, 2014 incident to an officer involved shooting in Milwaukee that resulted in a fatality and led to citywide riots and deployment of the National Guard.[16] Moreover, despite her testimony drawing comparisons to Officer Weber (who was discharged the same day as Officer Lehner), Chief Harteau could not recall any of the details, even in summary form, of why she discharged Officer Weber. This is significant because (i) Chief Harteau testified that discharging an employee is difficult on her; (ii) she had discharged Officer Weber less than eight months before her testimony in this matter; *and* (iii) the arbitration decision in Officer Weber's matter was served just three weeks before her August 16 testimony in this matter. *See* City Ex. 39. Her lack of any knowledge of Officer Weber's case displays either a callous indifference to her officers or that she approves discipline panel recommendations as a *pro forma* formality. The latter is certainly supported by the four-sentence memorandum explaining her decision to discharge Officer Lehner, an 18-year veteran of the MPD.

Chief Harteau's testimony that it "doesn't matter if an arbitrator changes discipline" is extremely troubling because it undercuts the very foundation of the labor agreement's just cause provision. To phrase her testimony differently, even if an arbitrator reverses

[16] Chief Harteau conceded that Ms. Nelson was not shot; was, in fact, not injured at all, and that there were no riots or protests in Minneapolis as a result of the August 4, 2014 incident.

discipline, Chief Harteau will still use it against that employee because she believed her initial decision was correct. Such an arrogant attitude erodes the bargaining process and undermines PELRA's public policy and its requirement that "[a]ll contracts must include a grievance procedure providing for *compulsory binding arbitration* of grievances including all written *disciplinary actions*." Minn. Stat. § 179A.20, subd. 4(a) (emphasis added).

Chief Harteau's testimony that police officers cannot consider any previous interaction with, or knowledge of an individual, and that they must live only "in the now" further demonstrates how out of touch Chief Harteau is as the chief law enforcement officer of a major metropolitan city. Chief Harteau's testimony that Officer Lehner could not take into consideration that Ms. Nelson had previously physically struck his hands (not once but twice) or that Ms. Nelson had displayed combative and non-responsive behavior for roughly 20-minutes, including specific directives to remain in her apartment and not come downstairs is directly contradicted by the MPD's internal policies and training (specifically, the Use of Force Continuum and the definition of objective use of force in MPD Policy 5-302) but also the longstanding Supreme Court precedent (*Graham v. Connor* and its progeny) that is explicitly referenced in MPD Policy 5-300.

Chief Harteau's ignorance is further highlighted by her oft-referenced gun analogy during the hearing—that if an individual drops his/her gun, you cannot shoot them. First, this overly simplistic analogy disregards the MPD Policy that "police officers are often forced to split-second judgments – in circumstances that are tense, uncertain, and rapidly

evolving – about the amount of force that is necessary in a particular situation"—what Lt. Anderson described as a totality of the circumstances analysis. For example, the officer may have knowledge of a second gun or that the subject also has a knife. Chief Harteau's testimony would mean that the officer could not use any force at all unless the subject created a new threat "in the now". Second, while deadly force may no longer be appropriate, that is not to say that no force is allowed. Certainly, de-escalated force could be used to affect an arrest or to gain control of the individual in order to conduct a pat down search for weapons. Third, the hypothetical dropping of the hypothetical gun shows that the individual is complying with the directives of law enforcement, something that Ms. Nelson did not do. Last, this hypothetical scenario where deadly force is at play is completely different from the situation at hand and has no bearing on this matter. With that in mind, it should not be overlooked that Officer Lehner did not use deadly force, never considered deadly force, and, in fact, never considered any type of pain compliance technique. Instead, he pushed a combative, non-compliant individual in an attempt to gain control. To relate it to the Use of Force Continuum, he never left the "green box" and his force was objectively reasonable.

The City has failed to meet its burden of proof that Officer Lehner violated Policy 5-303. Accordingly, the grievance should be sustained and discipline on the allegation of excessive force should be reversed.

III. OFFICER LEHNER DID NOT CALL MS. NELSON A "CUNT".

The evidence in the record does not prove beyond a preponderance of the evidence that Officer Lehner called Ms. Nelson a cunt. Officer Lehner has consistently and adamantly denied using that word. Officer Lukes did not recall Officer Lehner calling Ms. Nelson a cunt or any derogatory names. City Ex. 21, at 9:23-24 ("Q: Do you recall Officer Lehner calling Amy a cunt? A: No"); *see also* City Ex. 21, at 10:20-21 ("Q: Do you recall [Officer Lehner] saying any derogatory names to [M.s Nelson]? A: No"). To support its decision, the City relied exclusively on the statements of Ms. Nelson and Shenita Essaw. The statements of both witnesses are inherently unreliable and should be given little weight.

In her statement to Sgt. Walters, Ms. Nelson admitted she was intoxicated to the point of being "blacked out" on the night of August 4, 2014. City Ex. 19, at 4:20. In fact, she had mixed alcohol with prescription medicine which further "intensified" the effects of the multiple shots of vodka she had taken. *Id.* This admission alone would seriously undermine the veracity of Ms. Nelson's statements. When it is combined with the fact that nearly all of Ms. Nelson's recollection of the events of August 4 is repudiated by other evidence in the record, and the apparent attempt by Ms. Kiffmeyer to influence the investigatory process, Ms. Nelson's statement should be given minimal, if any weight.

Ms. Nelson's inconsistencies and inaccuracies are abundant. For example, she specifically and confidently identified Officer Lukes as the one that pushed her and as the one who called her a cunt as well as other names. Although there is no dispute that Officer

Lehner pushed Ms. Nelson, the confidence and detail with which Ms. Nelson misidentified Officer Lukes calls into question the accuracy of her statement as a whole. When shown a picture of Officer Lukes, Ms. Nelson stated she immediately recognized him as the officer who pushed her. With regard to Officer Lehner, she said that "the one with the mustache and the hair that was receding was the one that was just standing there. . . . He was just standing there." City Ex. 19, p. 11:18-25. Even after being shown a picture of Officer Lehner, Ms. Nelson did not recognize Officer Lehner. *See id.* at 11:41-42. When asked where she was standing when she was first pushed, Ms. Nelson responded: "at the top of those three stairs in the back." *Id.* at 9:3-9. The video, however, shows she was in the threshold of the doorway. Although it was never specifically asked where she was when she was allegedly called names, Ms. Nelson seemingly believe that it occurred downstairs *after* she had been pushed. *See* City Ex. 19, at 7:44-8:14. Ms. Essaw, on the other hand, stated that it occurred "[u]p by the apartment door." City Ex. 23, at 5:14.

When asked if the phone was knocked out of her hand before or after she was pushed, Ms. Nelson said "before." City Ex. 19, at 9:31-33. With regard to the allegation that she was called a cunt, Ms. Nelson said the officer called her a cunt "several times". *Id.* at 8:14. Ms. Essaw stated that it was "[o]nly once." City Ex. 23, at 5:41. Ms. Nelson went on to state that the officer also called her a "little bitch" and told her to "shut the F up". These latter allegations are not corroborated by any other witness or evidence. DC Folkens's effort to explain away Ms. Nelson's inconsistencies fails as it is entirely more reasonable that Ms. Nelson's inaccuracies were a result of the fact that she was blackout

drunk at the time of the incident not because she had not viewed the video. Ms. Nelson's inconsistencies are exacerbated by the fact that she did not testify at the arbitration hearing where she would have been subject to cross-examination.

According to Ms. Nelson, the only other witness to the "cunt" allegation, Ms. Essaw, had "drank way, way more than" her. City Ex. 19, at 14:35-36. In her statement, Ms. Essaw confirmed that she was drunk on August 4, 2014:

> Q: Was [Ms. Nelson] drunk that night?
> A: Mm-hmm (indicating yes).
>
> Q: Yeah?
> A: We all were.
>
> Q: Yeah.
> A: [laughs] We all were.

City Ex. 23, at 8:30-37. The impact of Ms. Essaw's intoxication on her memory and the length of time between the August 4, 2014 incident and her statement on August 17, 2015, undermines the accuracy of her statements. When the intoxication and length of time is coupled with the explanation provided by Officer Lehner at the *Loudermill* that Ms. Essaw might have misheard "you *can't* hit me" to be "you cunt", it is reasonable that Ms. Essaw may have misheard what Officer Lehner said. City Ex. 4, at 8: ("I told Nelson numerous times that she can't hit me. . . . I don't know what [Ms. Essaw] heard, but I know I told [Ms. Nelson] she *can't* hit me, she *can't* go into the apartment.") (emphasis added). Officer Lehner's explanation corresponds to the timeline provided by Ms. Essaw, that it happened right after Ms. Nelson hit Officer Lehner: "He told her don't hit and she hit him." Unfortunately, the City conducted no follow up with Ms. Essaw to determine if she could

have misheard. The City's failure to ask a simple follow-up question is compounded by the fact that Ms. Essaw did not testify at the hearing where she would have been subject to cross-examination.

Consequently, the Federation was not able to cross-examine the only two witnesses to this allegation and neither has ever provided a statement under oath. The City has, therefore, failed to meet its burden of proving that Officer Lehner called Ms. Nelson a "cunt."

It is no coincidence that the only two witnesses to the August 4 incident who alleged that Officer Lehner used the word "cunt" were also the only two individuals who spoke to property manager Alyssa Kiffmeyer before giving their statements. Ms. Kiffmeyer's role in this matter should not be understated as the evidence reveals her attempts to influence the investigation. Ultimately, the investigation caught her in one outright lie and provides several other examples of her attempts to influence the investigation.

First, in an e-mail to Sgt. Ryan Johnson on August 11, 2014, Ms. Kiffmeyer stated that she has "had 2 separate complaints *about the same officer* . . . . when I received the second complaint *about the same officer* doing the same thing, it then just concerned me." City Ex. 15, p. 3 (emphasis added). Ms. Kiffmeyer did not say that they were merely two similar incidents; rather, she explicitly stated *twice* that it was the "same officer." *Id.* According to Ms. Kiffmeyer, she knew it was the same officer because she "sent a picture of the officer to, um, [clears throat] Andrea [Fossmo], the prior complainant regarding the language and, uh Andrea did identify him as the officer." City Ex. 18, at 7:35-37. When

asked a second time, Ms. Kiffmeyer confirmed that she "showed Andrea [Fossmo] a still picture from your video footage of the August 4th incident and [Ms. Fossmo] confirmed that is the same officer." *Id.* at 7:43-46.

Ms. Kiffmeyer's statement was proven to be a lie during the investigation. When asked by Sgt. Walters, Ms. Fossmo explicitly denied having identified to Ms. Kiffmeyer the officer who called her names. When asked by Sgt. Walters if Ms. Kiffmeyer had shown her the video from the August 4th incident, Ms. Fossmo stated "she did not." City Ex. 22, at 3:13-16. When asked if she at any time identified any officer as the officer that called her names, Ms. Fossmo replied: "No." *Id.* at 3:18-20. Moreover, MPD records showed that Officer Lehner had never before responded to a call at 2609 Blaisdell Avenue South. Accordingly, the inarguable evidence in the record is that Officer Lehner was not the officer involved in the May/June 2014 incident. Moreover, the City knew of this credibility issue before it determined to discharge Officer Lehner.

The questions surrounding Ms. Kiffmeyer's involvement do not end there, however. The night after the incident, August 5, 2014, was National Night Out. Ms. Kiffmeyer told Sgt. Walters that she talked to Ms. Nelson at National Night Out "before I even knew about what happened between her and the police." City Ex. 18, at 2:33-34. Yet, Ms. Nelson told Sgt. Walters that Ms. Kiffmeyer "came to me" during National Night out[17] and "had already known about it, of course, because she knows about all the incidents that happen in the building." City Ex. 19, 13:7-15. In fact, Ms. Nelson told Sgt. Walters that "Alyssa is

[17] There is no evidence that Ms. Nelson was intoxicated on August 5, 2014.

the one that said something to us" about how one of the officers had pushed Ms. Desjarlais's daughter. City Ex. 19, at 10:27-30. The record thus shows that Ms. Kiffmeyer sought out Ms. Nelson the next night with detailed knowledge of the incident; yet, attempted to downplay her knowledge to Sgt. Walters and allege that Ms. Nelson approached her. Sgt. Walters seemingly recognized this inconsistency, as evidenced by his directly asking Ms. Nelson (whom he interviewed *after* Ms. Kiffmeyer) whether Ms. Nelson went "to her or did she come to you?" Ms. Nelson responded: "She came to me." City Ex. 19, at 13:11-12. Ms. Kiffmeyer also admitted to speaking with Ms. Essaw, but then went out of her way to insist that she spoke with Ms. Essaw only to get her phone number. City Ex. 18, at 9:5-6.

That Ms. Kiffmeyer did not speak to Azekia Saunders or April Baker, who were also present when Officer Lehner allegedly made the statement to Ms. Nelson, is noteworthy because neither of these individuals alleged that Officer Lehner called Ms. Nelson any derogatory names. Ms. Saunders did not allege that Officer Lehner had called Ms. Nelson a cunt and effectively stated that the officers acted only professionally. When explicitly asked if she heard anything that the officers said to Amy, she responded: "no, I didn't. . . . When we were all upstairs, they just kept telling her to be quiet and she kept going and going and going. And then that's all I heard." City Ex. 20, p. 5: 39-43. When asked if there was anything else she could think about from that night, she replied, "no." *Id.*at 6:7-9. Ms. Baker did not provide a statement to Sgt. Walters. Neither testified at the hearing.

In sum, the only two witnesses who alleged that Officer Lehner called Ms. Nelson a cunt were coincidentally the only two witnesses who spoke with Ms. Kiffmeyer prior to giving their statement. That is troubling given Ms. Kiffmeyer's proven lie regarding the allegation that Officer Lehner had previously called a resident a cunt in May/June 2014. While Ms. Kiffmeyer's adamancy that it was "the same officer" and her lie regarding Ms. Fossmo confirming that information may not form a basis for discharge, it does highlight Ms. Kiffmeyer's direct attempt to influence the investigation which is substantial because Ms. Nelson was admittedly black out drunk on August 4 and her statement to Sgt. Walters shows that her recollection from August 4 was shaky at best. Ms. Essaw was also intoxicated on August 4 and her memory of the incident over one year later is inherently unreliable. It is therefore reasonable to conclude, based on the evidence in the record, that Ms. Kiffmeyer influenced Ms. Nelson's and Ms. Essaw's recollection prior to their statements. The City has failed to meet its burden and this Arbitrator should find that Officer Lehner did not violate MPD Policy 5-105(15).

A. The photographic identification is unreliable.

Both Ms. Nelson and Ms. Essaw identified the officer who called Ms. Nelson a cunt based upon the first photograph they were shown. In Ms. Nelson's case, it was Officer Lukes:

> Q: I'm gonna show you a picture. Do you recognize this officer?
> A: Mm-hmm (indicating yes)
> . . .
> Q: Is he the one who pushed you?
> A: Mm-hmm (indicating yes).

City Ex. 19, at 9. For Ms. Essaw, the first photograph was of Officer Lehner:

> Q: There were two officers there that night. . . This one here?
> A: Yeah, that the one that she hit.

City Ex. 23, at 5:17-21. It is worth noting that the photo in which Ms. Essaw identified Officer Lehner only shows the back of his head because he is facing away from the camera. This calls into question the accuracy of the identification, as Ms. Essaw was seeing this photo over one year removed from the incident.

The record demonstrates that the single-photo lineup was unnecessarily suggestive. Although this is evidenced by the mere fact that Ms. Nelson so confidently identified Officer Lukes, there are several other factors as well. First, both Ms. Nelson and Ms. Essaw were heavily intoxicated on the night in question so their opportunity to view and remember Officer Lehner is substantially diminished. Second, there were two officers present that night, both white males of similar age in identical MPD uniforms. Third, Ms. Essaw's identification did not happen until a year after the event and Officer Lehner's face is not even visible in the photo she relied upon to identify him. Given the totality of the circumstances, the use of a single photograph was both unnecessary and highly suggestive. There were no extenuating circumstances that would have prevented Sgt. Walters from using alternative methods of identification in this case. Last, because neither Ms. Nelson nor Ms. Essaw testified at the hearing, they did not identify Officer Lehner in an in-court identification procedure and neither was subject to cross-examination. The City has failed to prove beyond a preponderance of the evidence that Officer Lehner called Ms. Nelson a cunt, and the grievance should be sustained.

IV. THE CITY IGNORED PROGRESSIVE DISCIPLINE AND HOW SIMILARLY SITUATED EMPLOYEES WERE TREATED.

The City improperly relied on a suspension that is currently in the grievance process to enhance to a category D violation[18] and, in turn, lend support for its decision to discharge. *See* City Ex. 8, at 2 ("Although this case is currently being grieved, we will continue to follow the discipline process and enhance the alleged violation . . . from a Category C to a Category D"). This suspension[19] is currently in the grievance process and is not final disposition of discipline. *See* Minn. Stat. § 13.43, subd. 2(b). A similar attempt to rely on discipline in the grievance process to justify discharging a police officer was recently rejected by Arbitrator Jacobs who noted that the grieved suspension was "still pending and has not therefore been finalized" before concluding that the prior "suspension was not given much weight at all and was not considered in determining the outcome of this case[20]." City Ex. 39, at 5.

The need to use grieved discipline to support its leap to the industrial death sentence of discharge underscores the weakness of the City's progressive discipline argument. The employer must show that "a reasonable attempt was made toward rehabilitation through the use of progressive discipline." *Discipline and Discharge*, at 110. The purpose of

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[18] It should be noted that a category D violation is not a mandatory discharge but could also be demotion or up to a 720-hour suspension. *See* City Ex. 8, at 4.

[19] Although the suspension was given in June 2014, the actual incident occurred in May 2012. It should also be noted that the discipline panel recommended a non-disciplinary A violation coaching that was increased to a C level suspension by Chief Harteau or his designee.

[20] Arbitrator Jacobs's decision speaks for itself. Officer Weber's actions were not in any way similar to the allegations against Officer Lehner and are, therefore, not germane to this matter.

progressive discipline is to put employees on notice of improper behavior in order to give them a chance to correct their behavior. *Id.* at 65-66. Progressive discipline is therefore mutually beneficial because it gives the employee a chance to correct his/her behavior and allows the employer to keep a trained and valuable employee. *See id.* at 66. Discipline is considered excessive if it is "out of step with the principles of progressive discipline, if it is punitive rather than corrective, or if mitigating circumstances were ignored." *Elkouri,* at 966. The evidence shows that Officer Lehner acted in compliance with MPD policy and training on August 4, 2014.

Chief Harteau's testimony that the incident would have been a category D violation irrespective of Grievant's prior discipline undercuts the City's chief argument to justify discharge, including DC Folkens's testimony that the prior discipline certainly factored into the discharge recommendation, and, more significantly, is clearly repudiated by the evidence in the record which shows that the discipline administered by Chief Harteau for similar (if not worse) conduct has never risen above a B violation. *See* Union Ex. 3-7.

A. Similar Conduct Received Far Less Discipline.

Grievant's discharge is inconsistent with previous discipline for similar uses of force and failure to report. *See* Union Exs. 3-7. "If the employer has not consistently applied and administered relevant company policy, an arbitrator may find that discharge was too severe." *Discipline and Discharge*, at 296. The record shows that, since Chief Harteau was sworn in, no MPD police officer has been discharged for use of force while six officers received discipline far short of discharge for use of force and/or failure to report use of

force. *See* Union Exs. 3-7.[21] For these other officers, discipline ranged from coaching, to a letter of reprimand, to a short suspension. *See id.* Yet, Officer Lehner was discharged.

The City's argument that these other officers had different employment history is not necessarily borne out by the record. The Federation requested "[t]he final disposition of any disciplinary action against any employee of the Minneapolis Police Department, together with the specific reasons for the action and data documenting the basis of the action, from December 4, 2012 to the present related to violations of Policies 5-303; 5-306; and 5-105(15). Union Ex. 8. The request for data and the City's legal obligation as a government entity was to provide the final disposition of discipline as well as "the specific reasons for the action and data documenting the basis of the action." *See* Union Ex. 8. In other words, if an employee's prior discipline was a reason for the disciplinary action, it should have been included in data responsive to the Federation's MGDPA request.

Even though prior discipline is not mentioned in Union Exhibits 3-7, that does not mean there was no prior discipline, as shown by a review of the same type of documents in this matter that were provided by the City in response to the MGDPA request. For instance, prior discipline was not mentioned in similar documents in Officer Lehner's matter. The responsive data generally included Complaint Form #3401, a Discipline Worksheet, a letter of discipline, and a Discharge, Suspension or Involuntary Demotion Form. *See* Union Exs. 3-6. A review of these same forms with regard to Officer Lehner

[21] There was some dispute over the accuracy of Union Exhibits 3-7. These exhibits were provided to the Federation from the City in response to the data practices request in Union Exhibit 8 and bear the City's Bates' stamp in the bottom right hand corner. Any inaccuracy is therefore the fault of the City and its obligations under the MGDPA.

makes no mention of his prior discipline. *See* City Ex. 13 (Complaint Form #3401); City Ex. 9 (Discipline Worksheet and Chief Harteau 1/22/16 memo); City Ex. 10 (Discharge, Suspension or Involuntary Demotion Form). Moreover, Lt. Kroll testified that at least one of the comparative officers had instances of discipline on his record.

Notwithstanding the City's self-admission that the data provided in response to the Federation's MGDPA request was unreliable, the data that was provided portrays coaching, written reprimands, and short suspensions for conduct that Lt. Kroll testified was worse than Officer Lehner's:

- One officer used forced causing a "laceration over [the] left eye orbital bone" of a juvenile. Union Ex. 3. The injury was so apparent that the juvenile was refused entry to the Juvenile Detention Center because the registered nurse believed him to be in need of medical attention. *Id.* at 1207. He was then transported home and released. *Id.*
    - For this, the officer received two **category A coachings** for the "decision to cite and release" and "juveniles in need of medical attention" and a **category B 20-hour suspension** for the failure to notify a supervisor of use of force causing injury. *Id.* at 1212 (emphasis added). The discipline letter was signed on August 28, 2014 by Assistant Chief Matthew Clark on behalf of Chief Harteau. *Id.*

- On December 15, 2014, two MPD officers were involved in the arrest of an individual suspected of loitering and selling narcotics. Union Ex. 4. The individual struggled with the officers as he was placed under arrest and "sustained a small cut near his right eye from hitting the sidewalk." *Id.* at 1226. Neither officer reported the use of force causing injury to a supervisor.
    - Each officer was given a **category B letter of reprimand**. Prior awards and performance were explicitly considered as mitigating factors for discipline. *See id.* at 1228 and 1233. The decision to issue these officers a written reprimand was made by Assistant Chief Arneson on behalf of Chief Harteau just two months after Chief Harteau discharged Officer Lehner. *See id.* at 1234.

- One month after Officer Lehner was placed on home assignment, Assistant Chief Arneson, on behalf of Chief Harteau, issued to a supervisor who failed to report that she slapped a citizen while on horseback a **category B violation** with a **10-hour suspension**. Union Ex. 5 at 1249.

- Just prior to the above discipline, a patrol officer who slapped a citizen while on horseback and called him a "little fuck" or "little fucker" was given a **category B violation letter of reprimand** for failing to report the use of force and code of conduct – language. Union Ex. 7. The letter was signed by Assistant Chief Arneson on behalf of Chief Harteau on June 16, 2015. *Id.*

- An officer who pulled a subject's earring out causing bleeding while attempting to arrest him received two **category B violations** with a **letter of reprimand** for failing to complete a CAPRS report and failing to notify a supervisor of the force causing injury. Union Ex. 6. The discipline letter was signed August 12, 2015, by Assistant Chief Arneson on behalf of Chief Harteau. *Id.*

The record shows that unauthorized use of force and failing to report force is a low level disciplinary offense that has never risen above a category B violation under Chief Harteau. Despite every other similar (if not worse) violation of MPD Policy 5-303, 5-306, and 5-105(15) provided by the City receiving a category A or category B violation, Officer Lehner was given three category D violations. As discussed above, Grievant's conduct complied with MPD Policies and training and no discipline is an appropriate remedy. At most, Grievant should be given a corrective action similar to these examples that falls far short of discharge.

V. OFFICER LEHNER'S LONG, GOOD WORK RECORD MITIGATES AGAINST DISCHARGE.

Officer Lehner's long, good service record with the MPD mitigates against discharge. Chief Harteau's testimony that a long work record is an aggravating factor flies in the face of nearly sixty years of arbitration decisions which have consistently considered

an employee's past record as a "major factor" to *reduce* discipline.[22] *Elkouri*, at 15-63. In many cases, arbitrators "have reduced penalties in consideration of the employee's long, good past record." *Id.* One study examining arbitration awards involving discharge found that the prior work record was the most frequently cited mitigating factor considered by arbitrators. *See* Jennings, Sheffield, & Walter, *The Arbitration Discharge Cases: A Fourth Year Perspective*, 38 Lab. L.J. 33, 41 (1987). *Elkouri* describes long service with an

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[22] *See e.g., Foods & Commercial Workers Local 7 v. King Soopers, Inc.*, 222 F.3d 1223 (10th Cir. 2000); *Silverstream Nursing Home*, 2000 WL 1481892 (DiLauro, 2000); *Oldmans Township Bd. of Educ.*, 2000 WL 1481889 (DiLauro, 2000); *USS, Div. of USX Corp.*, 1999 WL 1074563 (Petersen, 1999); *City of Southfield*, 1999 WL 908627 (McDonald, 1999); *Elkhart County, Ind., Gov't*, 112 LA 936 (Cohen, 1999); *Weyerhaeuser Paper Co.*, 1999 WL 555867 (Eisenmenger, 1999); *Wayne State Univ.*, 111 LA 986 (Brodsky, 1998); *Western Res.*, 1998 WL 1110785 (O'Grady, 1998); *USS, Div. of USX Corp.*, 111 LA 52 (Neyland, 1998); *Mason & Hanger Corp.*, 109 LA 957 (Jennings, 1998); *Penn Traffic*, 1998 WL 1041392 (Imundo, Jr., 1998); *Smurfit Recycling Co.*, 103 LA 243 (Richmman, 1994); *Canteen Corp.*, 99 LA 649 654-55 (Allen, Jr., 1992); *Ball-Incon Glass Packaging Corp.*, 98 LA 1, 4-5 (Volz, 1991); *Ohio Dep't of Youth Servs.*, 97 LA 734, 738 (Bittel, 1991); *Rohm & Haas Tex.*, 92 LA 850, 856 (Allen, Jr., 1989); *S.E. Rykoff & Co.*, 90 LA 233, 235 (Angelo, 1987); *Weyerhauser Co.*, 88 LA 270 (Kapsch, 1987); *Consolidation Coal Co.*, 85 LA 506, 511 (Hoh, 1985); *Victory Mkts*, 84 LA 354, 357 (Sabghir, 1985); *Potomac Elec. Power Co.*, 83 LA 449, 453 (Kaplan, 1984); *Fisher Foods*, 82 LA 505, 512 (Abrams, 1984); *Southwest Detroit Hosp.*, 82 LA 491, 492 (Ellmann, 1984); *City of Burlington, Iowa*, 82 LA 21, 24 (Kubie, 1984); *Pfizer, Inc.*, 79 LA 1225, 1236 (Newmark, 1982); *Stylemaster, Inc.*, 79 LA 76, 78-79 (Winton, 1982); *Pinkerton's of Fla.*, 78 LA 956, 961 (Goodman, 1982); *Commonwealth of Pa.*, 73 LA 556, 561 (Gerhart, 1979); *Ryder Truck Rental*, 72 LA 824, 828 (Cohen, 1979); *Sunweld Fitting Co.*, 72 LA 544, 558 (Hawkins, 1979); *Kast Metals Corp.*, 70 LA 278, 284 (Roberts, 1978); *City of Boulder, Colo.*, 69 LA 1173, 1178 (Yarowsky, 1977); *Shenango, Inc.*, 67 LA 869, 869-70 (Cahn, 1976); *Charleston Naval Shipyard*, 54 LA 145.151 (Kesselman, 1971); *Ingersoll-Rand Co.*, 50 LA 487 (Scheiber, 1968); *Lockheed-California Co.*, 47 LA 937, 940 (Levin, 1966); *Marathon Rubber Prods. Co.*, 46 LA 297, 302 (Lee, 1966); *Clinton Engines Corp.*, 35 LA 428, 430 (Young, 1960); *Pan Am. World Airways Sys.*, 33 LA 257, 259 (Seitz, 1959); *Reed Roller Bit Co.*, 29 LA 604, 608 (Hebert, 1957); *Pratt & Whitney Co.*, 28 LA 668, 672 (Dunlop, 1957); *Ironrite, Inc.*, 28 LA 394, 398 (Haughton, 1956; *Niagara Frontier Transit Sys.*, 26 LA 575, 577 (Thompson, 1957).

employer as a "*definite* factor in favor of the employee whose discharge is reviewed through arbitration." *Elkouri*, at 15-68 (emphasis added).

Officer Lehner worked from 1998-2016 with minimal discipline and amidst glowing reviews and commendations. Grievant's annual performance evaluations, introduced as Union Exhibit 1, show that Officer Lehner was an "outstanding" employee. In fact, Officer Lehner has not received a single rating in any category below "satisfactory" or "meets expectations". *See* Union Ex. 1. The supervisor comments in Grievant's most recent performance reviews[23] further confirm his continued outstanding performance:

2014 review by Sgt. Phillip Gangnon (Union Ex. 1, at 1135-41)

- "Promotes a positive attitude."
- "Is leader on his squad and the shift in making good stops and arrests"
- "makes good decisions without guidance"
- "Is a leader on the shift and finds creative solutions to problems"
- "Works well with co-workers, other professionals, victims and witnesses in routine situations"

2013 review by Sgt. Rick Altonen (Union Ex. 1, at 1142-49)

- "very competent in his work product"
- "has a very set of skills and ability for this position"
- "consistently performs high quality work. He just knows policy and applies it."
- "needs little supervision and consistently goes good work"
- "I have witnessed nothing but professionalism from him the whole time he has been here. I call him a self-starter and an Officer that needs little to no supervision"

2012 review by Sgt. Buege (Union Ex. 1, at 1150-55)

[23] Officer Lehner's direct report in 2015 was Sgt. Adrian Infante who testified that he completed and signed a 2015 performance review for Officer Lehner and gave him one of the best reviews of Sgt. Infante's group of six officers.

- "is looked at by others on the shift as an example to follow"
- "well versed on the policies and follows them well when doing his job, no matter what the situation"
- "makes good, sound, well thought out decisions in the field. His course of action is always coupled with good officer safety techniques in mind."
- "an excellent asset when doing shift details"
- "Blayne is courteous and professional with most people, even though he may be arresting them"
- "Blayne is very well respected by the community and businesses he serves, and is known as an aggressive, go-getter type cop"
- "Blayne is an excellent beat cop . . . is a true leader on our shift, and an asset to the 3rd Pct as a whole"

2011 review by Sgt. Buege (Union Ex. 1, at 1156-60)

- "Blayne is highly motivated and needs little to no supervision or structure"
- "Blayne knows the policies and procedures well and can always be counted on to do the right thing"
- "Blayne frequently goes to business and community meetings and represents the dep't well"

In addition to the outstanding performance reviews, Officer Lehner is highly decorated, having received numerous formal awards and informal commendations. *See* Union Ex. 2.

The following is an example of the formal awards[24] Grievant has received:

- **Department Award of Merit**—awarded October 16, 2013 for his actions "with complete disregard to his safety" to gain control (through the use of a neck restraint) of a non-compliant suspect armed with a handgun. Union Ex. 2, at 1062-64. Although he received the Department Award of Merit, Officer Lehner had been nominated for the Medal of Valor, the department's second highest award.
- **July 2013 Officer of the Month**—his supervisors describe Officer Lehner as "one of the silent leaders on the shift" whose "attitude toward policing is exemplary". Union Ex. 2, at 1065-66. In July 2013 alone Officer Lehner "answered 141 calls

[24] A list of the MPD awards and the criteria to receive each award is listed on Union Ex. 2, p. 1064.

for service, had 16 arrests and made 54 stops", including two felony burglaries and holding armed suspects at gunpoint until backup could arrive.

- **2010 Third Precinct Officer of the Year—**for his work, together with now Sgt. Werner, developing a major drug and violent offender case in conjunction with the BCA, ATF, and U.S. Attorney that resulted in 9 federal charges, 59 state felony arrests, 285 misdemeanor arrests, and the recovery of stolen vehicles, handguns, and narcotics. Union Ex. 2, at 1083-84.
- **October 2010 Officer of the Month.** Union Ex. 1, at 1160.
- **Medal of Commendation** – awarded January 9, 2006 for developing a confidential informant who provided information leading to the arrest of an armed gang member. Union Ex. 2, at 1100-03. In particular, the 6'4", 280-pound suspect, armed with a loaded .45 caliber Desert Eagle and carrying a large amount of cash crack-cocaine, ran when he saw police. Officer Lehner chased him into an apartment containing three young children. Officer Lehner placed himself between the suspect and the children until backup arrived and they were able to subdue the suspect.
- **April 2007 Officer of the Month.** Union Ex. 2, at 1094.

In addition to formal awards, Union Exhibit 2 is replete with informal thank "you's" and "attaboys" from supervisors and citizens alike.

Officer Lehner has also been *nominated* for multiple awards, including 5th Precinct Officer of the Year in 2013 (the year preceding this incident) and 2014 (the year this incident occurred). He was nominated by his supervisors to be the 5th Precinct Officer of the Year in 2013 for being "hard working, professional, smart, quick to make a decision and willing to go the extra mile." Union Ex. 2, at 1059-61. His supervisors noted that "[n]umerous arrests have been made this year SOLELY due to Officer Lehners [sic] incredible street knowledge" and that several of those resulted in taking "guns off of the street." *Id.* (emphasis in original). His supervisors again nominated him for 5th Precinct Officer of the Year in 2014 stating that Officer Lehner "has been an informal leader on the dogwatch shift and the precinct itself for 2014" and "has a consistent work ethic and . . .

[h]is work is not just quantity, it is quality." Union Ex. 2, at 1052-53. The nomination makes note of Officer Lehner's election to the POFM Board. *Id.* In 2014, he was nominated for Officer of the Month in November and February. Officer Lehner was "highly recommended!" for the MPD's Lifesaving Award in March 2013 for his efforts in assisting a hypothermic male by using the "department issued blanket and his own body heat to try and warm the victim". Union Ex. 2, at 1067-68. The Life Saving Award is defined as "acts that contribute to the effort and attempt of saving of a person's life." *Id.* at 1071. According to the nomination, "it was clear from the paramedics that without Officer Lehner's quick thinking and actions the victim would have expired." *Id.* Yet, Chief Harteau denied the award and instead placed a letter in his file. *See id.* at 1067.

The record illustrates an outstanding police officer both before and *after* August 4, 2014. The City's argument that Grievant's conduct warranted discharge is undercut by the fact that Officer Lehner continued to work as a police officer for 13 months *after* the August 4, 2014 incident.[25] To ignore 18 years of outstanding performance and end his career is excessive and out of step with the principles of progressive discipline.

The City's punitive approach to discipline is illustrated by DC Folkens's testimony. DC Folkens testified that while he (and the discipline panel) knew of prior discipline, neither he nor the discipline panel reviewed Officer Lehner's awards, commendations, or

[25] Grievant was placed on home assignment September 9, 2015. The City became aware of the incident when the complaint was filed on August 6, 2014. The investigation essentially concluded in November 2014 with Grievant's *Garrity* statement on November 18, 2014. There appears to have been no investigation conducted for nine months between November 18, 2014 and August 8, 2015.

performance evaluations despite having access to Officer Lehner's personnel file. This is troubling given that the discipline worksheet specifically contemplates "mitigating factors" and even more troubling given that mitigating factors such as these were considered for other employees during the same time period. *See* Union Ex. 4, at 1228 (being "one of the top performers on the Mid-Watch shift . . . earned a Medal of Valor and Medal of Merit" were considered mitigating factors for failing to report use of force causing injury); Union Ex. 4, at 1233 (being "one of the top performers on the Mid-Watch shift, and . . . FTO since his second year" considered mitigating factors for failing to report use of force causing injury); Union Ex. 2, at 1240 (referring to "Case Finding Memorandum for Mitigating Factors" in failing to report force resulting in injury). Clearly, mitigating factors are considered for other officers, and the City offered no explanation for why it refused to consider mitigating factors for other officers but not Officer Lehner. DC Folkens's testimony proves that the City's decision was punitive rather than corrective. The grievance should be sustained and discharge reversed.

CONCLUSION

The evidence shows a long-term officer extremely knowledgeable of MPD policy and a command staff, lacking understanding of its policies and training, twisting evidence to justify its quantum leap to discharge of a long-term, good employee. The City's square-peg-round-hole approach comes at the expense of the actual evidence which shows that Officer Lehner's actions on August 4, 2014 closely conformed to the MPD's training and its Use of Force Continuum. The City's tortured attempt to redefine "takedown technique"

in order to justify a violation of 5-306 fails the smell test let alone the City's burden of proof. Likewise, the inherently unreliable statements from Ms. Nelson and Ms. Essaw, when viewed in light of Officer Lehner's denial and explanation for what Ms. Essaw may have actually heard, Officer Lukes not hearing any derogatory names, and Ms. Saunders not hearing any derogatory names, do not prove by clear and convincing or even a preponderance of the evidence that Officer Lehner called Ms. Nelson a cunt or any other derogatory name. The evidence in the record does not prove by even a preponderance of the evidence that Officer Lehner violated MPD Policies 5-303, 5-306, or 5-105(15).

Alternatively, if a policy violation was proven, other employees received far less discipline for similar behavior. That mitigating factors were considered in those instances but not in this matter lends credence to the argument that Officer Lehner was treated differently due to his position with the Federation. Similar, if not worse, conduct received coaching and written reprimands when coupled with Officer Lehner's long, good work record mitigates against discharge, and the grievance should be sustained.

REQUEST FOR RELIEF

Based upon the foregoing arguments, the Federation respectfully requests the Arbitrator award the following relief:

1. That Grievant Blayne Lehner's discharge be set aside and he be immediately reinstated as a police officer and made whole through reimbursement of salary, benefits, and seniority for the period of time during his discharge; or

2. In the alternative, any remedy the Arbitrator considers appropriate.

Respectfully submitted,

Dated: September 16, 2016

KELLY & LEMMONS, P.A.

/s/ Kevin M. Beck

Kevin M. Beck, ID #389072
223 Little Canada Road, #200
Little Canada, MN 55117
kbeck@kellyandlemmons.com

EXHIBIT

140

4/7/2016

Deputy Chief Travis Glampe
City Hall, Room 130
350 S 5th St
Minneapolis, MN 55415

Dear Chief Glampe:

Enclosed please find the grievance on behalf of Officer [redacted] regarding IAU Case# [redacted] which resulted in B coaching. I would request to meet with you at your earliest convenience regarding POFM grievance number [redacted]
Thank you.

Sincerely,

POFM Director

CC: Chief Harteau
CC: Assistant Chief Arneson
CC: Nina Doree, Police Admin Secretary
CC: Tim Giles, Labor Relations
CC: Cmdr. Jason Case, Internal Affairs
CC: Emily Kokx, Admin Assistant

Pl.'s Ex. 140

Police Officers' Federation of Minneapolis
Grievance Form

Grievant: [redacted] **Grievant's Rank:** Officer

Grievant's Work Location: [redacted] **Grievance Number:** [redacted]

Name & Title of Grievant's Immediate Supervisor: [redacted]

Statement of Grievance: The Federation does not concur with the discipline of B level coaching. Based upon the discipline matrix, B level discipline is not coaching and has a reckoning period of 3 years. Coaching is at an A level and remains with the disciplined party for a period of 1 year. This form of discipline is holding it against the grievant for an extended period of time, and can be used against him in enhanced discipline.

Contract Violation(s): Article 4.

Remedy Sought: Make whole, abide by the panel decision of coaching, and bring it back to A coaching.

Dated: 4/7/2016 Name of Federation Representative: Bjork

Presented to: Deputy Chief Glampe Date: 4/7/2016

SEE NEXT PAGE FOR RESPONSE TO GRIEVANCE STEPS

EXHIBIT

146

THE CITY OF MINNEAPOLIS

and

THE POLICE OFFICERS' FEDERATION OF MINNEAPOLIS

LABOR AGREEMENT

POLICE UNIT

For the Period:

January 1, 2009 through December 31, 2011

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LABOR AGREEMENT

Between

CITY OF MINNEAPOLIS

and

THE POLICE OFFICERS' FEDERATION OF MINNEAPOLIS

THIS AGREEMENT (hereinafter referred to as the ***Labor Agreement*** or the ***Agreement***) is entered into between the City of Minneapolis, a municipal corporation incorporated under the laws of the State of Minnesota (the ***City***, the ***Employer***, or the ***Department***), and the Police Officers' Federation of Minneapolis (the ***Federation***).

It is the purpose and intent of this Agreement to achieve and maintain sound, harmonious and mutually beneficial working and economic relations between the Parties hereto; to provide an orderly and peaceful means of resolving differences or misunderstandings which may arise under this Agreement; and to set forth herein the complete and full agreement between the Parties regarding terms and conditions of employment except as the same may be established by past practices which are determined to be binding by an arbitrator and not included in this contract. The Parties hereto agree as follows:

ARTICLE 1
RECOGNITION

Section 1.1 The City recognizes the Federation as the exclusive representative for the unit consisting of all sworn law enforcement personnel except those appointed to serve in the positions of Chief of Police, Assistant Chief of Police, Deputy Chief and Inspector. Prior to the ratification of this Agreement, the Employer shall provide to the Federation copies of its Table of Organization, including the number and rank of police personnel assigned to Department positions and applicable Minneapolis Civil Service Commission job specifications. Nothing herein shall be construed as a limitation upon the Employer's managerial prerogatives including the right to modify the Table of Organization (i.e., its organizational structure) and to select, direct and determine the number of personnel in accordance with the provisions of the *Minnesota Public Employment Labor Relations Act*, as amended, except as expressly set forth in this Agreement.

Section 1.2 Duty assignments shall be made by the Department which are consistent with Minneapolis civil service job classifications. Disputes which may arise over alleged *working out*

of class violations (i.e., violations of Minneapolis Civil Service Commission Rule No. 4.04 or the working out of class provisions of this Agreement), shall be first discussed by representatives of the Federation and the Department. If the issue is not resolved by such informal discussions, either party may proceed under the dispute resolution procedures set forth in Article 5 of this Agreement.

Section 1.3 Disputes which may occur over the inclusion or exclusion of new or revised or other classifications in the unit described in Section 1.1 above shall be referred to the State Bureau of Mediation Services for determination pursuant to the provisions of the *Public Employment Labor Relations Act*, as amended.

Section 1.4 Notwithstanding any provisions of this Agreement to the contrary, the Parties agree that pursuant to the provisions of *Laws 1961*, Chapter 108, Sections 1 through 4 as amended by *Laws 1969*, Chapter 604 and *Laws 1978*, Chapter 580 and the provisions of this Section, the Chief of the Department may appoint three (3) Deputy Chiefs of Police, five (5) Inspectors, the Supervisor of Morals and Narcotics, the Supervisor of Internal Affairs and the Supervisor of License Inspection to perform the duties and services he/she may direct, without examination. The Parties further agree that such persons shall serve at the pleasure of the Chief of Police; and, that any person removed from one of such positions pursuant to *Laws 1969*, Chapter 604, Section 2, has the right to return to his/her permanent civil service classification. Notwithstanding the foregoing, if the law is amended to so allow, the Chief of the Department may appoint up to five (5) Deputy Chiefs and up to eight (8) Inspectors.

Section 1.5 *Seniority* as provided for in this Agreement shall be established from the date of initial employment and assignment as described in Article 1, Section 1.1 of this Agreement. Time while absent from the Department without compensation, except while on disability leave or while on non-voluntary active military service, shall not be counted for seniority. Separate seniority lists to determine seniority within each rank shall be maintained and shall be computed from the date of promotion to that rank. In the event of promotion to supervisory positions not within the unit and upon return to the unit, all service so performed shall be computed for seniority purposes to the rank held upon return to the unit. In the event of a demotion to a lower rank, the seniority accrued in the higher rank shall be applied to the seniority of the lower rank to which demoted.

ARTICLE 2
PAYROLL DEDUCTION FOR DUES

Section 2.1 - Dues Deductions. The City shall, upon request of any employee in the unit, deduct such sum as the Federation may specify as the regular dues of the Federation. The City shall remit monthly such deductions to the appropriate designated officer of the Federation.

Section 2.2 - *Fair Share Fee* Deductions. In accordance with *Minnesota Statutes* §179A.06, Subd. 3, the City agrees that upon notification by the Federation it shall deduct a *fair share fee* from all certified employees who are not members of the Federation. This fee shall be an

amount equal to the regular membership dues of the Federation, less the cost of benefits financed through the dues and available only to members of the Federation, but in no event shall the fee exceed eighty-five percent (85%) of the regular membership dues. The Federation shall certify to the City, in writing, the current amount of the fair share fee to be deducted as well as the names of bargaining unit employees required by the Federation to pay the fee.

Section 2.3 - Administration.

(a) The City shall annually select a single payroll period in each month for which all monthly membership dues and fair share fees shall be deducted. In the event an employee covered by the provisions of this Article has insufficient pay due to cover the required deduction, the City shall have no further obligations to effect subsequent deductions for the involved month.

(b) All certifications from the Federation respecting deductions to be made as well as notifications by the Federation and/or bargaining unit employees as to changes in deductions must be received by the City at least fourteen (14) calendar days in advance of the date upon which the deduction is scheduled to be made in order for any change to be effected.

(c) The City shall remit such membership dues and fair share fee deductions made pursuant to the provisions of this Article to the appropriate designated officer of the Federation within fifteen (15) calendar days of the date of the deduction along with a list of the names of the employees from whose wages deductions were made.

(d) Each month, the City shall provide to the Federation a report containing the following current information with regard to all employees covered by this Agreement pursuant to Section 1.1: name, home address, phone number, hire date, pay status (active or inactive) and the name of any employee who separated from service since the prior report with the reason for the separation. The City shall also provide to the Federation a copy of or electronic access to all transfer lists generated by the Department showing promotions, demotions, leaves of absence and changes in work location.

Section 2.4 - Hold Harmless Provision. The Federation will indemnify, defend and hold the City harmless against any and all claims made and against any suits instituted against the City, its officers or employees, by reason of deductions under this article.

ARTICLE 3
MANAGEMENT RIGHTS

The Federation recognizes the right of the City to operate and manage its affairs in all respects in accordance with applicable law and regulations of appropriate authorities. All rights and

authority which the City has not officially abridged, delegated or modified by this Agreement are retained by the City.

ARTICLE 4
DISCIPLINE

Section 4.1 The City, through the Chief of the Minneapolis Police Department or his/her designee, will discipline employees who have completed the required probationary period only for just cause. The unit of measurement for any suspensions which may be assessed shall be in hours. Investigations into an employee's conduct which do not result in the imposition of discipline shall not be entered into the employee's official personnel file maintained in the Police Department and/or the City's Human Resources Department. For the purposes of this Article, disputes related to personnel file retention and/or reconciliation may be resolved through the procedures set forth in Article 5, Settlement of Disputes.

Section 4.2 A suspension, written reprimand, transfer, demotion (except during the probationary period) or discharge of an employee who has completed the required probationary period may be appealed through the grievance procedure as contained in Article 5 of this Agreement. Also, an oral reprimand imposed on an employee who has completed the required probationary period which results from a sustained finding by the Civilian Review Authority following an evidentiary hearing may be appealed through the grievance procedure as contained in Article 5 of this Agreement. In the alternative, where applicable, an employee may seek redress through a procedure such as Civil Service, Veteran's Preference, or Fair Employment. Except as may be provided by Minnesota law or by Section 5.10 of this Agreement, once a written grievance or an appeal has been properly filed or submitted by the employee or the Federation on the employee's behalf through the grievance procedure of this Agreement or another available procedure, the employee's right to pursue redress in an alternative forum or manner is terminated.

Section 4.3 Pursuant to the terms and definitions set forth in the Minnesota Government Data Practices Act, the Chief of Police and/or the Human Resources Director or their respective designees shall be the "responsible authority" with regard to all "personnel data" gathered or maintained by the City with regard to employees governed by this Agreement. Employees shall receive copies of and be permitted to respond to all letters of commendation or complaints that are entered and retained in the official personnel file. Upon the written request of employees, the contents of their official personnel file shall be disclosed to them, or with formal release, their Federation Representative, and/or their legal counsel.

Section 4.4 – Investigatory Interviews.

(a) Before taking a formal statement from any employee, the City shall provide to the employee from whom the formal statement is sought a written summary of the events to which the statement relates. To the extent known to the City, such summary shall include: the date and time (or period of time if relating to multiple events) and the location(s) of the alleged events; a summary of the alleged acts or

omissions at issue; and the policies, rules or regulations allegedly violated. Except where impractical due to the immediacy of the investigation, the summary shall be provided to the employee not less than two (2) days prior to the taking of his/her statement. If the summary is provided to the employee just prior to the taking of the statement, shall be given a reasonable opportunity to consult with a Federation representative before proceeding with the scheduled statement.

(b) In cases where the City believes that providing the pre-statement summary would cause a violation of the Minnesota Government Data Practices Act or cause undue risk of endangering a person, jeopardizing an ongoing criminal investigation or creating civil liability for the City, the City shall notify the Federation's President or attorneys of the reasons it believes that the pre-statement summary should not be given.

(c) Nothing herein shall preclude an investigator, whether during or subsequent to the taking of a formal statement, from soliciting information which is beyond the scope of the pre-statement summary but which relates to information provided during the taking of the statement and which could form the basis of a disciplinary action.

(d) An employee from whom a formal statement is requested is entitled to have a Federation representative present during the taking of such statement. The Federation representative shall be allowed to advise the employee but shall not respond for or advocate for the employee nor disrupt the investigation proceedings. The Federation will ensure that representatives at all times conduct themselves in a professional manner.

(e) For the purpose of this Section 4.4, a "formal statement" is a written, recorded or transcribed record, whether in a narrative form or in response to questions, which is requested to be provided by any sworn employee as part of an investigation of alleged acts or omissions by a sworn employee(s) which may result in the imposition of discipline against any sworn employee(s).

ARTICLE 5
SETTLEMENT OF DISPUTES

Section 5.1 – Scope. This article shall apply to all members of the bargaining unit, but only as to resolution of grievances and not to interest arbitration.

Section 5.2 - Letter of Inquiry. Any employee may initiate a "letter of inquiry" for the purpose of requesting from the City or the Federation information on salary, working conditions and/or benefits. The request shall be presented to the Federation in writing. A Federation representative shall process the letter of inquiry. Where the Federation representative believes it necessary, may request in writing from the Director of Employee Services such information or

interpretation necessary to enable the Federation to prepare a response to the inquiry. The Director of Employee Services shall respond to such request by the Federation within ten (10) days of receipt. The Federation then will respond to its member.

Section 5.3 - Informal Problem Resolution. From time to time, concerns regarding possible violations of this agreement may arise. Many of these concerns can be resolved informally. A concern that cannot be resolved informally and which is subsequently presented to the Employer formally pursuant to the procedures set forth in this Article is called a grievance.

Section 5.4 – Grievance Procedure. Grievances shall be resolved in the manner set out below. The City will cooperate with the Federation to expedite the grievance procedure to the maximum extent practical.

A "grievance" is any matter concerning the interpretation, application, or alleged violation of any currently effective agreement between the City and the bargaining unit. Any document or notice provided by one party to the other via email or other mutually acceptable electronic means shall satisfy the requirement that such document be provided in writing.

Subd. 1. - Step One.

To initiate a grievance, the Federation representative shall, within the time period specified below, inform the Chief or his/her designee in writing on the standard grievance form. If the Federation expressly requests a discussion with the grievant's immediate supervisor or other ranking officer with authority to resolve the grievance as designated by the Chief concerning the written grievance, such discussion shall take place within three (3) days after filing the grievance, unless the time is mutually extended. The discussion with such Employer representative shall be held with one of the following:

a. The employee accompanied by a Federation representative;
b. The Federation representative alone if the employee so requests;
c. The employee alone on his/her own behalf.

Within ten (10) days after the grievance is filed or the discussion meeting concludes, whichever is later, the Chief or his/her designee shall state his/her decision in writing, together with the supporting reasons, and shall furnish one (1) copy to the Federation, one copy to the Assistant Chief and one (1) copy to the Director of Employee Services. Each step one decision shall be clearly identified as a "step one decision."

A grievance must be commenced at step one no later than twenty (20) calendar days from the discovery of the grievable event(s) or from when the event(s) reasonably should have been discovered, or twenty (20) calendar days from the receipt of the Employer's response to a related letter of inquiry, whichever is earlier.

Subd. 2 - Step Two.

A Class Grievance, one that impacts more than three (3) bargaining unit members, may be initiated at Step 2.

Subd. 2 - Step Two.

If the step one decision is not satisfactory, a written appeal may be filed by the Federation with the Chief of Police, within twenty (20) days of the date of the step one decision. Upon request of the Federation, a meeting shall be held between the Chief of Police, and the Federation President. If the grievance arises from discipline imposed following a finding of the Civilian Review Authority, the Manager of the CRA shall also attend the meeting. The Manager of the CRA shall be authorized to negotiate with the Federation and resolve the grievance over just cause as to finding that misconduct occurred. The Manger of the CRA, in consultation with the Chair of the CRA, using rules established by the CRA, shall have the authority to modify the CRA finding(s). The meeting shall be scheduled by the Chief of Police, and held within twenty (20) days after receipt of the written appeal.

The Chief of Police, shall have the full authority of the City Council to resolve the grievance.

Within twenty (20) days after the step two meeting or receipt of the step two appeal, whichever is later, the Chief of Police shall send a written response to the Federation. The step two decision shall clearly identify that answer as a "step two decision."

Subd. 3- Step Three - Regular Arbitration.

Within twenty (20) days of the date of the step two decision the Federation shall have the right to submit the matter to arbitration by informing the Director of Employee Services that the matter is to be arbitrated.

If the matter is to be arbitrated, a single arbitrator shall be selected from the panel of mutually agreed upon arbitrators. The initial panel of arbitrators and the process for removing, replacing and renewing the arbitrators on the panel shall be established by the mutual written agreement of the parties within thirty (30) days of the ratification of this agreement or as soon thereafter as the parties are able to do so. Arbitrators shall be selected from the panel on a rotating basis. If a grievance is referred to arbitration before the parties are able to agree on the selection of a panel of arbitrators, the party referring the grievance to arbitration shall petition the Bureau of Mediation Services to provide a list of nine (9) qualified arbitrators from which the parties may select an arbitrator to hear the grievance. The Employer and Federation shall select an arbitrator using the alternate strike method with the party exercising the first strike selected by coin flip.

One observer representative of the Federation, the Grievant and all necessary employee witnesses shall receive their regular salary and wages for the time spent in the arbitration proceeding, if during regular work hours. An additional Federation observer shall be allowed; however, the Federation shall provide the means for compensating the additional observer.

The arbitrator shall render a written decision and the reasons, therefore resolving the grievance, and order any appropriate relief within thirty (30) days following the close of the hearing or the submission of briefs by the parties. The decision and award of the arbitrator shall be final and binding upon the City, the Federation and the employee(s) affected.

The arbitrator shall have no authority to amend, modify, nullify, ignore, add to, or subtract from the provisions of this agreement. The arbitrator is also prohibited from making any decision that is contrary to law or to public policy.

Section 5.5 – Mediation. The City and the Federation, by mutual agreement, may utilize the grievance mediation process in an attempt to resolve a grievance before going to arbitration.

The objective of mediation is to find a mutually satisfactory resolution to the dispute. The parties shall mutually choose a mediator or have a mediator assigned by the Bureau of Mediation Services.

One representative of the Federation, the Grievant and all necessary employee witnesses shall receive their regular salaries or wages for the time spent in the grievance mediation proceeding, if during regular working hours.

The following procedures shall apply to mediations conducted under this Section:

(a) Arbitration time frames shall be tolled during the mediation procedure; however, there shall be no additional extensions without written mutual agreement.

(b) Grievances that have been appealed to arbitration may be referred to mediation if both the Federation and the City agree.

(c) Mediation conferences shall be scheduled in the order in which the grievance is appealed to mediation with the exception of suspension or discharge grievances, which shall have priority.

(d) Promptly after both parties have agreed to mediate, the parties shall notify the Bureau of Mediation Services. The Bureau of Mediation Services shall arrange for the conference.

(e) The mediation proceedings shall be informal in nature, and the goal will be to mediate up to three (3) grievances per day.

(f) Each party shall have one (1) principal spokesperson that will have the authority to agree upon a remedy of the grievance at the mediation conference.

(g) One (1) Grievant will have the right to be present for each grievance.

(h) The issue mediated will be the same as the issue the parties have failed to resolve through the grievance process. The rules of evidence will not apply, and no transcript of the mediation conference shall be made.

(i) The mediator may meet separately with the parties during the mediation conference. The mediator will not have the authority to compel the resolution of a grievance.

(j) Written material presented to the mediator or to the other party shall be returned to the party presenting the material at the termination of the mediation conference, except that the mediator may retain one (1) copy of the written grievance to be used solely for the purposes of statistical analysis.

(k) If no settlement is reached during the mediation conference, the mediator shall provide the parties with an immediate oral advisory opinion. The opinion will involve the interpretation or application of the collective bargaining agreement and the reasons for his/her opinion. The parties may agree that no opinion shall be provided.

(l) The advisory opinion of the mediator, if accepted by the parties, shall not constitute a precedent, unless the parties otherwise agree.

(m) If no settlement is reached as a result of the mediation conference, the grievance may be scheduled for arbitration in accordance with "Step Three" of the grievance procedure.

(n) In the event a grievance that has been mediated is subsequently arbitrated, no person who served as the mediator may serve as the arbitrator. In the arbitration hearing, no reference to the mediator's advice or ruling may be entered as testimony nor may either party advise the arbitrator of the mediator's advice or ruling or refer at arbitration to any admissions or offers of the settlement made by the other party at mediation.

(o) By agreeing to schedule a mediation conference, the City does not acknowledge that the case is properly subject to arbitration and reserves the right to raise this issue notwithstanding its agreement to schedule such a conference.

(p) The fees and expenses of the mediator and mediation office, if any, shall be shared equally by the parties.

Section 5.6 - Expedited Arbitration. Upon the mutual agreement of the parties, any grievance to be arbitrated may be referred to expedited arbitration where the time frame for effective resolution is so short that the normal arbitration procedure would be untimely. Upon such referral, the Federation and the City will make immediate (within twenty-four (24) hours) arrangements with the panel selected by the parties, or if none has been selected, with the Bureau of Mediation Services. The expedited arbitration procedure shall begin as soon as the parties and the arbitrator can initiate a hearing. It shall be the specific request of both the Federation and the City to have a decision within seven (7) days of the hearing, and that no briefs will be filed.

Section 5.7 - Time Limits. Time limits, specified in this procedure may be extended by written mutual agreement of the parties. The failure of the City to comply with any time limit herein means that the Federation may automatically process the grievance to the next step of the grievance procedure. Failure of the Federation or its employees to comply with any time limit herein renders the alleged violation untimely and no longer subject to the grievance procedure.

Section 5.8 - Arbitration Expenses. The fees and expenses of the Arbitrator shall be divided equally between the Employer and the Association provided, however, that each Party shall be responsible for compensating its own representatives and witnesses. If either Party desires a verbatim record of the proceedings, it may cause such record to be made provided it pays for the cost of preparing the record. Further, if the party requesting the record requests submitting post-hearing briefs, such party shall at its cost provide a copy of the record to the other Party and to the Arbitrator.

Section 5.9 - Election of Remedy. Employees covered by Civil Service systems created under Chapters 43A, 44, 375, 387, 419, or 420 of Minnesota Statutes, by a home rule charter under Chapter 410 of Minnesota Statutes, or under Laws of Minnesota, 1941, Chapter 423, may pursue a grievance through the procedure established under this section. When a grievance is also within the jurisdiction of appeals boards or appeals procedures created by Chapters 43A, 44, 375, 387, 419, or 420 of Minnesota Statutes, by a home rule charter under Chapter 410 of Minnesota Statutes, or under Laws of Minnesota, 1941, Chapter 423, the employee may proceed through the grievance procedure or the Civil Service appeals procedure, but once a written grievance or appeal has been properly filed or submitted on the employee's behalf with the employee's consent, the employee may not proceed in the alternative manner.

Nothing in this contract shall prevent an employee from pursuing both a grievance under this contract and a charge of discrimination brought under Title VII, The Americans with Disabilities Act, the Age Discrimination in Employment Act, or the Equal Pay Act.

Section 5.10 – No Waiver of Rights Without Written Agreement. In order to facilitate the resolution of disputes or concerns in a more expedient and non-adversarial manner, the Parties desire to be able to discuss the resolution of such matters without having such discussions be construed as a waiver of either the Employer's right to exercise its unabridged managerial prerogatives or the Federation's right to negotiate over terms and conditions of employment. The

parties acknowledge the holding of the Minnesota Supreme Court in *Arrowhead Public Service Union v. City of Duluth* [336 N.W.2d 68 (Minn. 1983), 116 LRRM (BNA) 2187] as follows:

> Without question, decisions concerning a City's budget, its programs and organizational structure, and the number of personnel it employs to conduct its operations are matters of [inherent managerial] policy. While a public employer must negotiate terms and conditions of employment, it is not required to negotiate matters of inherent managerial policy although it may do so voluntary. When, however, a public employer negotiates matters of inherent managerial policy which it has no obligation to negotiate and thereby relinquishes the right to determine policy with respect to its budget, its organizational structure and the number of personnel it should employ, *the public employer - like the collective bargaining representative which waives the statutory right to bargain over a mandatory subject of bargaining - must do so in clear and unmistakable language.* [emphasis added; citations omitted]

Therefore, it is not a prerequisite to substantive and/or meaningful discussions concerning a matter of interest to either the Employer or the Federation or the Parties jointly that the Parties agree as to whether the matter is a *term and condition of employment* or an *inherent managerial policy* as those terms are defined and referenced in *Minnesota Statutes* Chapter 179A, as amended. The Parties may freely discuss any such matters and may reach an understanding regarding the extent to which the matter may be resolved and/or the manner of resolution. However, unless the parties shall enter into a written agreement which contains clear and unmistakable language documenting a waiver of rights, neither the mere fact that the Parties had such discussions nor the existence of any understanding regarding resolution of the matter shall constitute or be construed to be a waiver of either: the Federation's right to at any time thereafter assert or contest that the matter is a term and condition of employment which is subject to collective bargaining and which may not be unilaterally imposed; or the Employer's right to at any time thereafter assert that the matter is one of inherent managerial policy not subject to mandatory collective bargaining prior to implementation.

Section 5.11 – Past Practices. Evidence of custom and past practice may be introduced for the following purposes:

(a) to provide the basis of rules governing matters not included in the written contract;

(b) to indicate the proper interpretation of ambiguous contract language; or

(c) to support allegations that clear language of the written contract has been amended by mutual action or agreement.

The extent to which such evidence of custom and past practice shall be considered to bind the parties is governed by generally accepted principles of labor relations applicable to the purpose for which the evidence is offered.

ARTICLE 6
STRIKES AND LOCKOUTS

Section 6.1 The Federation, its officers or agents, or any of the employees covered by this Agreement shall not cause, instigate, encourage, condone, engage in or cooperate in any strike, the stoppage of work, work slowdown, the willful absence from one's position, or the abstinence in whole or in part from the full, faithful and proper performance of the duties of employment, regardless of the reasons for so doing.

Section 6.2 In the event the City notifies the Federation in writing that an employee may be violating this Article, the Federation shall immediately notify such employee in writing of the City's assertion and the provisions of this Article.

Section 6.3 Any employee who violates any provision of this Article may be subject to disciplinary action or discharge, pursuant to the *Minneapolis City Charter*, Chapter 19.

Section 6.4 The City will not lock out any employee during the term of this Agreement as a result of a labor dispute with the Federation.

ARTICLE 7
SALARIES

Section 7.1 All salaries shall be computed and paid on a biweekly basis. The regular amount of pay shall be the biweekly rate regardless of the number of hours on duty for that period, provided that the employee is on duty as scheduled or is on authorized paid leave.

Section 7.2

(a) Attachment "A", which is attached hereto and incorporated herein, shall be the schedule of wage rates for employees during the period January 1, 2009 through August 31, 2009.

(b) Attachment "B", which is attached hereto and incorporated herein, shall be the schedule of wage rates for employees during the period September 1, 2009 through July 31, 2010.

(c) Attachment "C", which is attached hereto and incorporated herein, shall be the schedule of wage rates for employees during the period August 1, 2010 through June 30, 2011.

(d) Attachment "D", which is attached hereto and incorporated herein, shall be the schedule of wage rates for employees during the period July 1, 2011 through December 31, 2011.

The new salary schedule shall be implemented on the first day of the payroll period closest to the anniversary date.

Section 7.3 – Health Care Savings Account Contribution. Effective April 6, 2003 the Parties have adopted the Post Retirement Health Care Savings Plan, as established in Minn. Stat. §352.98, as administered by the Minnesota State Retirement System ("MSRS"). Subject to the terms and conditions established by MSRS, said program will provide a totally tax-free reimbursement for eligible medical expenses to those former employees who have an account balance consisting of the contributions from the Employer, mandatory employee contributions, and investment returns.

The Parties have negotiated that employees in this bargaining unit will make mandatory employee contributions in lieu of cash payment for the following items:

- $25.00 bi-weekly per employee
- 100% of Sick Leave Severance due at retirement (see Section 17.2);
- 100% of any unused vacation pay at the time of voluntary separation from service (see Section 12.5)

Section 7.4 - Longevity. A longevity payment shall be paid to each employee at the beginning of the eighth year of police service in the amount specified in the attached wage schedule, as applicable. Employees of record as of February 1, 1985 shall be regarded as having started at the *2nd Year* step for longevity progression purposes. The dollar amounts specified in the wage schedule shall be adjusted by the same percentage and at the same time as across the board increases in the base wages for the seventh step of the patrol officer wage schedule. An employee shall move to the next step in the longevity schedule on the anniversary of his/her employment with the Police Department.

Section 7.5 - Shift Differential. Employees in the Department who work a scheduled shift in which a majority of the work hours fall between the hours of 6:00 p.m. and 6:00 a.m., shall be paid a shift differential in the amount specified in the attached wage schedule for all hours worked on such shifts. The dollar amount specified in the wage schedule shall be adjusted by the same percentage and at the same time as across the board increases in the base wages for the seventh step of the patrol officer wage schedule. (See wage schedule for amount)

Section 7.6 - Pay Progressions. Employees shall be eligible to be considered for advancement to the next higher step within the pay range for their classification, if applicable, upon the completion of each twelve (12) months of *actual paid service* in such classification. Such increases may be withheld or delayed in cases where the employee's job performance has been of a less than satisfactory level in which case the employee shall be notified that the increase is being withheld or delayed and of the specific reasons therefore. All such denials or delays shall be subject to review under the provisions of Article 5 (*Settlement of Disputes*) of this Agreement.

All increases approved pursuant to this section shall be made effective on the first day of the pay period, which includes the date of eligibility. If an employee is advanced to the next higher step within his/her pay range by reason of the elimination of the step he/she was in, the employee's anniversary date in the job classification he/she was in at such time shall be permanently adjusted to the month and day that such step advancement occurred.

Section 7.7 - Pay Upon Promotion. The salary of an employee who is promoted to a position which provides for a higher maximum salary than the employee's current position shall be the next increment higher than the salary last received by such employee in the lower classification; provided, however, that if the next increment is not at least four percent (4%) higher than the salary last received, the employee shall be advanced an additional increment if one so exists and thereafter shall increase in accordance with Section 7.6 of this article. The provisions of this subdivision shall also be applicable whenever an employee is detailed by the Minneapolis Civil Service Commission to perform all or substantially all of the duties of a higher-paid classification.

Section 7.8 – Prior Sworn Law Enforcement Experience. The initial placement on the salary schedule in the classification of Patrol Officer for a new hire with prior experience as a sworn law enforcement officer shall be made according to the following table which provides service credit based on the years of prior consecutive service and the size of the department in which the person served:

	More Than 3 But Not More Than 5 Consecutive Years of Prior Service	**More Than 5 But Not More Than 10 Consecutive Years of Prior Service**	**More Than 10 Consecutive Years Of Prior Service**
Small Department (Less than 50 sworn personnel)	Step 1	Step 2	Step 2
Medium Department (More than 49 but less than 600 sworn personnel)	Step 2	Step 2	Step 3
Large Department (More than 600 sworn personnel)	Step 2	Step 3	Step 3

Prior service credit will be considered only if the new employee's last day of active service in the prior sworn position was within two years of the date of an offer of employment by the Minneapolis Police Department. If a new hire has prior sworn experience in more than one agency, credit will be given first with regard to service with the agency for which most recently worked. Credit will be given for an agency prior to the most recent agency only if the person's last day of sworn service in such prior agency was within five years of the date of an offer of employment by the Minneapolis Police Department and the employee had a break in service

between such two prior agencies of less than 6 months. Qualifying prior service credit in more than one agency may be aggregated, but in no event shall result in initial placement above Step 3 on the salary schedule. The new employee shall be entitled to future step increases thereafter pursuant to the provisions of Section 7.6.

Such prior service credit shall be used only to determine the new employee's initial placement on the salary grid and shall not be considered for purposes eligibility for promotion, vacation, bidding or other rights or benefits of employment which are based on time served with the Department. Regardless of whether a new employee is given such prior service credit, his/her seniority shall be determined consistent with the provisions of Section 1.5 of this Agreement.

Section 7.9 – Performance Premium. For the contract year beginning October 15, 2002, all employees in the ranks of patrol officer and sergeant shall be entitled to a lump sum payment upon receiving a satisfactory performance evaluation. The performance evaluation shall be completed with notification of satisfactory performance sent to payroll by November 15 with the premium being paid by December 31 of each year. For sergeants (for contract years after October 15, 2003) and patrol officers and who have completed seven years of service with the Department, the performance premium shall be equal to two percent (2%) of the employee's base pay, exclusive of shift differential, overtime or other forms of additional compensation. For patrol officers who have not yet completed seven years of service with the Department, the performance premium shall be equal to one percent (1%) of the employee's base annual wage, exclusive of shift differential, overtime or other forms of additional compensation. If the Department does not conduct a performance evaluation, the employee shall be considered to have received a satisfactory evaluation. An eligible employee who does not receive a satisfactory performance evaluation may, within thirty (30) days of receipt of the evaluation, appeal the evaluation to the appropriate Bureau Head for a final decision.

ARTICLE 8
CLOTHING AND EQUIPMENT ALLOWANCE

Section 8.1 Effective January 1, 2000, employees are eligible for an allowance of seven hundred fifty dollars ($750.00) per year. Effective as of January 1, 2001 and effective as of the first day of each calendar year thereafter, the allowance shall be adjusted by the percentage determined in accordance with the index described in Section 8.3, below. A newly hired employee shall be entitled, at any time during the first 18 months of his/her employment, reimbursement for the purchase price paid by him/her for clothing or equipment which comports with the list of approved clothing and equipment established by the Department upon the recommendation of the Uniform Committee. The maximum amount for which reimbursement is allowed shall be equal to three (3) times the annual clothing and equipment allowance in effect at the commencement of the new employee's employment. The reimbursement allowance shall be in lieu of the annual clothing and equipment allowance and, therefore newly hired employees shall not be entitled to the clothing and equipment allowance until after the third anniversary of their employment. Such an employee shall be entitled to the prorated portion of the annual clothing and equipment allowance for the calendar year in which his/her third anniversary occurs. If an

employee leaves his/her employment with the Department prior to his/her third anniversary, the Department is entitled to recover from the employee an amount equal to 1/36 of the reimbursement allowance received by the employee during his/her employment times the number of full months by which the employee fell short of attaining his/her 36 month anniversary.

Section 8.2 The Chief of the Police Department shall, on or before May 1 of each year, submit to the City Coordinator for approval the name and rank of each employee on the payroll as of April 1 who is entitled to such an allowance. Such allowance shall be paid on or about June 1.

Section 8.3 The Employer shall maintain a Uniform Committee which shall consist of three (3) persons selected by the Employer and three (3) persons selected by the Federation. The duties of the Uniform Committee shall include developing and maintaining a list of clothing and equipment which must be obtained in order to commence employment with the Department. Beginning in January 2000, and continuing each January thereafter, the Committee shall calculate the cost of obtaining all of the clothing and equipment on such list. The Committee shall then prepare and maintain a cost index which measures the annual percentage change from year to year in the cost of purchasing the clothing and equipment on the list.

ARTICLE 9
HOURS AND SCHEDULING OF WORK

Section 9.1 – Definitions. For the purpose of this Article 9, the following words have the meaning defined below:

(a) "Precinct Employee," singular, or "Precinct Personnel," plural, means any employee whose permanent work location is at a precinct or in the Special Operations Division ("SOD") , which for the purposes of this Article 9, shall be treated as a precinct.

(b) "Non-Bid Assignment" means an assignment of more than thirty days in duration to perform any one of the following functions: criminal investigations, limited duty, community response team, timekeeper, desk, mounted patrol, SAFE, D.A.R.E., STOP Patrol, school liaison/school patrol, or the sergeant supervising beat patrol; or an assignment for any employee whose permanent work assignment is at a location other than a precinct; or the supervisor of any of such functions. Additionally, the canine handler for a special-skilled canine paid for and/or controlled, in whole or in part by an outside law enforcement agency shall be included as a non-bid assignment.

(c) "Bid Assignment" means an assignment of more than thirty days in duration to: a function in which the primary job duties include uniformed patrol, 911 call response, and directed patrol; or a function at the rank of sergeant in which the

primary job duties are supervising employees performing the aforementioned job duties.

(d) "Beat Assignment" means a Bid Assignment for officers having a rank of patrol officer for which the primary job duties are foot patrol or business patrol in a specific location.

(e) "Directed Patrol Assignment" means any Bid Assignment for officers having the rank of patrol officer for which the primary job duties are enforcing specific criminal laws or interdicting, detecting, or pursuing specific criminal activity as designated by the Department or a supervisor. "Directed Patrol" duties are separate and distinct from the duties of a Beat Assignment or a 911 Responder and may include precinct personnel assigned to traffic enforcement.

(f) "911 Responder" means any Bid Assignment other than a Beat Assignment, SOD Assignment or a Directed Patrol Assignment.

(g) "Eligible Employee" shall mean any employee who, as of October 31 of any calendar year:

(1) is either:

(i) assigned to a specific precinct or is on an approved transfer list into a specific precinct; or

(ii) has completed more than two years of actual work after the conclusion of his/her ten day program; or

(iii) has the rank of patrol officer, or is a sergeant assigned to supervise patrol officers serving in Bid Assignments; and

(2) is either:

(i) currently assigned to a Bid Assignment; or

(ii) has satisfied any applicable minimum service requirements for his/her current Non-Bid Assignment and given the required notice of intent to be included in the bid.

(h) "Newly Hired Employee" shall mean any employee at the rank of patrol officer who, as of October 31 of any calendar year, has not completed more than two years of actual work after the conclusion of his/her ten day program.

(i) "Day Watch" shall mean a bid assignment shift which starts between the hours of 0500 and 1200.

(j) "Night Watch" shall mean a bid assignment shift which starts between the hours of 1400 and 2100.

(k) "Commencement Date" shall be the date on which the new Bid Assignments take effect following the bidding process described in Section 9.4, subd. (b).

(l) "Payroll Year" shall mean the period from one Commencement Date to the next Commencement Date.

(m) "STOP Patrol" shall mean an assignment to any of the following primary duties within the SOD: 911 response; directed patrol; dignitary protection; or direct supervision of patrol officers engaged in the foregoing duties.

Section 9.2 - Normal WorkDay and Work Period.

(a) The normal workday shall be a shift of either eight (8) or ten (10) consecutive hours of work. Except as specified herein, the Department shall have the discretion to determine whether the normal workday for a specific assignment shall be eight (8) or ten (10) hours.

(b) The normal work period shall be one hundred sixty (160) hours of work in each twenty-eight (28) day scheduling period.

(c) Notwithstanding the foregoing, the Department may implement a "normal workday" consisting of a shift of twelve (12) consecutive hours of work for officers assigned to desk duty at the First Precinct and for officers assigned to Stop Patrol on the following terms and conditions:

(i) Each employee assigned to desk duty at the First Precinct or to STOP Patrol has the sole discretion to elect to work a twelve (12) consecutive hour shift or to work a shift consisting of either eight (8) or ten (10) consecutive hours of work. However, once made, such election by an employee shall remain in effect for the duration of the precinct's bid year unless otherwise mutually agreeable to the employee and the Precinct Commander.

(ii) Pursuant to Sections 13.1 and 14.2 of the Labor Agreement, for employees who work a twelve (12) consecutive hour shift, a "day" of holiday leave and funeral leave shall be defined as twelve consecutive hours.

Section 9.3 - Work Schedules.

(a) The Department shall create a work schedule for all employees covered by this Agreement showing their assigned shift, the starting time therefore, their scheduled work days and their scheduled days off for the ensuing 28-day

scheduling period. The following principles shall apply with regard to establishing the schedule:

(1) For employees working an assignment for which the normal workday is ten hours, each scheduling period shall include 16 days for which the employee is scheduled to work and 12 days for which the employee is scheduled to be off work.

(2) For employees working an assignment for which the normal workday is eight hours, each scheduling period shall include 20 days for which the employee is scheduled to work and 8 days for which the employee is scheduled to be off work.

(3) Employees working as assignment for which the normal workday is a shift of twelve (12) consecutive hours shall be scheduled as follows: for twenty-eight (28) day scheduling periods 1-5 and 10-13, employees shall work thirteen (13) twelve-consecutive hour shifts in each scheduling period: for twenty-eight day pay periods 6-9, employees shall work fourteen (14) twelve-consecutive hour shifts in each scheduling period. This work schedule provides for 2,076 hours of scheduled work during the payroll year. Because a standard payroll year consists of 2,080 hours of scheduled work, an officer working a 12-hour shift under this Agreement shall: work an additional shift of four hours at straight time within the payroll year and with the date, hours and assignment to be mutually agreeable to the employee and his/her supervisor; or the employee, at his/her sole discretion, may use four hours of accrued vacation or compensatory time in lieu of working the four hour shift.

(4) When a holiday falls within the 28-day scheduling period, the number of scheduled days of work during the scheduling period shall be reduced by one for each such holiday.

(5) Reasonable consideration shall be given to employee requests for days off consistent with the needs of the Department. To be considered, however, an employee must submit his/her request not less than fifteen (15) days before the beginning of the next scheduling period. For employees assigned to STOP Patrol, reasonable consideration *may* be given to requests for days off.

(6) An employee may generally be scheduled to work up to six (6) days consecutively. If an employee is scheduled to work six (6) consecutive days, must generally be scheduled to have at least two (2) consecutive days off before he/she /she is scheduled to return to work. An employee's commander shall have the discretion to deviate from the maximum

number of consecutive days of work or the minimum consecutive days off.

(b) Work schedules shall be posted no later than ten (10) calendar days prior to the beginning of the scheduling period.

Section 9.4 - Work Schedules and Assignments for Bid Assignments. The normal work schedule for Precinct Personnel serving in Bid Assignments shall be established and maintained pursuant to the requirements of this Section 9.4

Subd. (a) ***Posting and Establishing Assignments; Normal WorkDay.*** On or before October 15 of each year, each precinct commander shall post a schedule of all Bid Assignments based on the actual strength for the precinct as of that date. With respect to each Bid Assignment, the schedule shall identify: the supervising lieutenant; the starting time; the Commencement Date; whether the assignment is 911 Responder, Directed Patrol Assignment or Beat Assignment; and the geographical area, if any. The Commencement Date shall be between December 15 and January 15 and shall be determined each year to be the date that is: the first day of a twenty-eight (28) day scheduling period; and closest to January 1. If two scheduling periods start on dates that are of equal distance from January 1, the Commencement Date shall be the first date of the scheduling period that begins after January 1. Each Bid Assignment shall have a specific starting time which shall be within the range of starting times for either day watch or night watch. There may be more than one starting time for shifts within a watch and the number of Bid Assignments allocated to each watch shall be established at the sole discretion of the precinct commander based on the needs of the precinct. Once posted, such starting times shall remain fixed until the next Commencement Date, except as adjusted pursuant to the provisions of this Section 9.4. The normal work day for all 911 Responders and Directed Patrol Assignments shall be ten (10) consecutive hours of work. The normal work day for Beat Assignments shall be either or eight (8) or ten (10) consecutive hours of work as determined in the sole discretion of the Department provided, however, that no more than twenty percent (20%) of the aggregate number of Bid Assignments for all of the precincts shall have an 8-hour work day.

Subd. (b) ***Bidding.*** Beginning on November 15 (or the first weekday thereafter if the 15th falls on a weekend) of each year, Eligible Employees shall be entitled to bid on all available Bid Assignments within their respective precincts for the upcoming payroll year. Bidding must be completed and the schedule for the upcoming year posted as soon as is practical and in no event later than twenty-one (21) days prior to the Commencement Date. The bidding priority of Eligible Employees shall be established within a precinct based on rank (first Sergeant, and then Patrol Officer) and on seniority within rank as determined by the "appointment date in rank" as noted in the records maintained by the Department's Human Resources Unit. However, not less than seven days before Patrol Officers begin bidding, the precinct commander shall assign the Newly Hired Employees within the precinct to a 911 Responder assignment, assign 911 Responder assignments to those patrol officers who have been selected to serve as canine officers, and may assign, at his/her discretion, employees who have volunteered for such an assignment to Directed Patrol or Beat Assignments. The number of such pre-bid assignments for volunteers to Directed Patrol or Beat Assignments shall not be more than

10% of the total number of Eligible Employees. Patrol Officers shall then be entitled to bid on the remaining Bid Assignments. Newly Hired Employees shall be assigned to work on the Night Watch for at least twelve (12) months during their first two (2) years of employment.

Subd. (c) ***Special Scheduling and Bidding Provisions for SOD Bid Assignments.*** On or before October 15 of each year, the supervisor in charge of the SOD shall post a schedule of all Bid Assignments based on the actual strength for the Division as of that date. With respect to each Bid Assignment, within a specialty the schedule shall identify: the starting time; the Commencement Date; and the geographical area, if any. Each Bid Assignment shall have a specific starting time which shall be within the range of starting times for either day or night watch. Once posted, such starting times shall remain fixed until the next Commencement Date, except as adjusted pursuant to the provisions of this Section 9.4. The normal work day for all SOD Bid Assignments shall be ten (10) consecutive hours of work; except with regard to canine officers. On a day for which the canine officer is scheduled to report for duty to his/her assigned position with the Department, the normal work day shall be a scheduled shift of nine (9) consecutive hours of work and one (1) hour of canine maintenance to be performed at the officer's discretion during his/her non-scheduled hours. Each canine officer shall also perform one (1) hour of canine maintenance each day at his/her discretion that his/her canine partner is in his/her custody even if the officer is not scheduled to work on that day. Accordingly, when a canine officer is excused from a scheduled work day by reason of using his/her accumulated sick leave, vacation or comp time on a day during which he/she will still perform canine maintenance duties, his/her respective account balance shall be reduced by nine (9) hours. Beginning on November 15 (or the first weekday thereafter if the 15th falls on a weekend) of each year, Eligible Employees shall be entitled to bid on all available Bid Assignments within their respective specialty areas (i.e., canine, traffic, etc.) for the upcoming payroll year. Bidding must be completed and the schedule for the upcoming year posted as soon as is practical and in no event later than twenty-one (21) days prior to the Commencement Date. The bidding priority of Eligible Employees shall be established within a specialty area based on rank (first Sergeant, and then Patrol Officer) and on seniority within rank as determined by the "appointment date in rank" as noted in the records maintained by the Department's Human Resources Unit.

Subd. (d) ***Removal from a Bid Assignment.*** Once an Eligible Employee has successfully bid for a Bid Assignment, or a First Year Employee has been assigned to a Bid Assignment, the employee shall not be removed from the Bid Assignment unless: the employee agrees to accept another assignment; the employee is transferred or removed by reason of disciplinary action as described in Article 4; the employee is reassigned pursuant to the application of the inverse seniority provisions in this Section 9.4; or the retention of the employee in the assignment would unduly disrupt the operations of the shift to which he/she is assigned. Notwithstanding the foregoing, Eligible Employees in the rank of sergeant may be transferred from a Bid Assignment when necessary to satisfy the legitimate needs of the Department so long as such transfers are not arbitrary and capricious.

Subd. (e) ***Filling Vacancies.*** When a vacancy in either a Bid Assignment or a Non-Bid Assignment within a precinct is to be filled with an employee other than a Newly Hired Employee, the precinct commander shall attempt to fill the vacancy by posting the vacancy and

seeking a qualified volunteer first from within the precinct and then from outside the precinct. The precinct commander may select from the volunteers at his/her discretion; except where there is more than one qualified volunteer from within the precinct for a vacancy in a Bid Assignment, the precinct commander should give primary consideration to the most senior volunteer. Notwithstanding the foregoing, the precinct commander is not required to select the most senior person; but if the most senior person is not selected, the precinct commander shall inform such person as to the reason he/she/se was not selected. If no volunteer is forthcoming, the precinct commander may fill the vacancy by inverse seniority as applied throughout the precinct. This subdivision shall not apply with regard to filling vacant canine assignments.

Subd. (f) ***Transfers into the Precinct After the Commencement Date.*** The assignment for an employee who transfers into a precinct after the Commencement Date of any payroll year will be established as follows. If there are vacancies in any Bid Assignment or Non-Bid Assignment, as determined by the posting made at the time of the bid for that year but subject to adjustment as provided in Subdivision (f), below, an employee transferring into a precinct, other than a Newly Hired Employee or a canine officer, shall be assigned to fill any such vacancy at the discretion of the precinct commander. If there are no vacancies in any existing Bid or Non-Bid Assignment, the commander may assign the employee to any assignment. Newly Hired Employees and canine officers who transfer into a precinct after January 1 shall be assigned to a 911 Responder assignment.

Subd. (g) ***Adjustments to Starting Times, Watches.*** During May, June or July of each year, and again during the months of September or October, the Employer may adjust the starting time of shifts within each watch for employees assigned to a Bid Assignment provided that: (i) the Employer provides not less than thirty (30) days posted notice of such adjusted starting time; (ii) the adjusted starting time continues to fall within each watch; and (iii) the adjusted starting time does not deviate more than one (1) hour from the starting time specified in the posting prior to the bid. With regard to any Bid Assignment that becomes vacant during the year, the precinct commander may change the starting time and/or the watch prior to filling the assignment. After any adjustment pursuant to this Paragraph, the starting time of the assignment shall remain fixed for the remainder of the year unless the assignment shall become vacant. The Employer may make the May/June/July adjustment even if the assignment was adjusted prior thereto as a result of a vacancy.

Subd. (h) ***Inverse Seniority for First Year Employees.*** Newly Hired Employee's shall not be subject to the application of inverse seniority under this Section 9.4.

Subd. (i) ***Integrity of Job Duties.*** While employees assigned to Non-Bid Assignments may occasionally be temporarily assigned to assist in the performance of duties normally associated with employees assigned to Bid Assignments, the Employer may not circumvent the provisions of this Article by the systematic reassignment of duties relating to Bid Assignments to employees serving in Non-Bid Assignments.

Subd. (j) ***Retention of Shift Differential.*** When a Precinct Employee assigned to a Bid Assignment who was entitled to receive a night shift differential pursuant to Section 7.5 is

permanently reassigned (a reassignment to last more than 30 consecutive calendar days) pursuant to the terms of this Section to an assignment that is not eligible for shift differential, such employee shall receive a lump sum payment in an amount equal to 348 hours times the hourly shift differential rate, as specified in the wage schedule appendix, in effect at the time of such assignment. Such payment shall be made regardless of the reason for the reassignment. An employee shall not receive more than one such reassignment payment bid per year.

Subd. (k) ***Special Operations Division.*** The SOD shall be treated as a precinct for the purposes of Subds. (e) through (j).

Section 9.5 - Work Schedules for Non-Bid Assignments.

Subd. (a) ***Establishing Assignments and Voluntary Details.*** The Employer retains the discretion to establish or eliminate as it deems necessary Non-Bid Assignments and voluntary details (specialty duties in addition to an employee's regular assignment), except that no more than 5% of the greater of: the total authorized strength of all sworn personnel of the Department; or the actual number of sworn personnel as determined on July 1 of each year; may be assigned to STOP Patrol. Upon establishing a Non-Bid Assignment or a voluntary detail, the Department shall develop an "Assignment Description" which shall include such information as the description of the duties associated with the assignment, the days of the week in a normal work week and the number of hours in the scheduled work day, the minimum qualifications or special skills needed to obtain the assignment, the rank which is necessary to obtain the assignment, the selection process for filling vacancies, the minimum length of service commitment for an employee who volunteers for the assignment and the process by which an employee may request to transfer to another assignment or be relieved from the voluntary detail. The Department retains the managerial right to modify the provisions of the Assignment Description or eliminate the assignment, subject to work-out-of class restrictions and the notice requirements of this Article as to the affected employees. The Department will use its best efforts to notify the Federation of such changes prior to implementing them.

Subd. (b) ***Filling Assignments.*** The Department retains the right to establish and modify in its sole discretion the selection process and the criteria used to select personnel to fill Non-Bid Assignments and voluntary details. However, the Department will give consideration to the expressed interests of affected employees.

Subd. (c) ***Scheduling.*** The Department retains the right to establish work schedules for Non-Bid Assignments, subject to the requirements of Sections 9.2 and 9.3. Except with regard to employees assigned to STOP Patrol, for units or work groups in which personnel are scheduled to work on Saturdays or Sundays or work a shift ending after 1900 hours, the Department will schedule night hours and weekends by seeking volunteers, by using an equitable rotation system or by offering employees the right to request days off prior to establishing the schedule as provided in Section 9.3.

Subd. (d) ***Minimum Length of Service for Non-Supervisory Personnel.*** The minimum length of service commitment for employees having the rank of patrol officer serving in any

assignment or voluntary detail other than a Bid Assignment in a precinct shall be two (2) years, or such other period as stated in the Assignment Description as of the date on which the employee began the assignment. However, if the employee was involuntarily assigned to the position or if the employer substantially modifies the essential terms and conditions of the assignment as set forth in the Assignment Description after the employee has voluntarily accepted the assignment; the minimum length of service shall be one (1) year. In order to be eligible to bid for a Bid Assignment, even if the officer has satisfied his/her minimum service requirement, a patrol officer must notify his/her commander by July 1 of his/her intent to return to a Bid Assignment for the succeeding calendar year and, if not already assigned to a precinct, be approved for a transfer to a precinct. Notwithstanding the foregoing, the Department may delay a transfer or re-assignment from a Non-Bid Assignment until such time as a suitably trained replacement is available. An employee who has completed the minimum length of service commitment for a voluntary detail may notify the Department of his/her intention to resign from the voluntary detail at any time. The Department will honor such request and relieve the employee of the duties associated with the voluntary detail within one year of such written notice. The Department, in its sole discretion, may waive the minimum length of service requirement for any Non-Bid Assignment or voluntary detail.

Subd. (e) ***Special Provisions for STOP Patrol Assignments.*** Notwithstanding any other provision of the Labor Agreement to the contrary, assignments to STOP Patrol are completely voluntary, meaning that: employees cannot be assigned to STOP Patrol against the expressed desire of the employee or by inverse seniority; and employees shall be transferred from STOP Patrol upon written notice to the commanding officer of requesting a transfer. Such request shall be granted within the lesser of: 90 days from the date of the request; or 30 days prior to the annual precinct bid. Further, Newly Hired Employees may not be assigned to STOP Patrol.

Section 9.6 - Transfers.

Subd. (a) ***Transfers Initiated by the Department.*** The Department retains the right to transfer personnel serving in Non-Bid Assignments and to relieve an employee of the duties of a voluntary detail as it deems necessary, subject to the notice requirements of this Article 9, and such transfer decisions are not arbitrable. The Department's right to transfer Precinct Personnel serving in Bid Assignments is governed by Section 9.4. The Department agrees that, upon the request of an employee, it will advise the employee of the reason the employee is being transferred or relieved of voluntary detail duties.

Subd. (b) ***Transfers Initiated Upon the Request of an Employee.*** Subject to the provisions of Section 9.5, Subd (e), the Department acknowledges that it is its policy to use reasonable efforts to accommodate the request by an employee to transfer from one assignment to another. However, with regard to supervisory personnel (those serving in the rank of Sergeant and above), nothing shall give the employee an absolute right to transfer from one assignment to another and the Department is under no obligation to grant a transfer request. With regard to personnel having the rank of Patrol Officer, the Department will generally honor a transfer request provided that the employee has satisfied any applicable minimum length of service requirements in his/her present assignment and the transfer will not unduly disrupt the operations

of the Department. The decision to deny a transfer request is not arbitrable, except with regard to a transfer request made pursuant to Section 9.5 Subd (e).

Section 9.7 - Temporary Change in Shifts.

The Department shall have the right to temporarily depart from an officer's bid shift (hours of work) and his/her posted 28-day work schedule. However, hours worked that are different from an officer's bid shift and/or posted 28-day work schedule (including any hours which would have fallen within the posted schedule had no such departure been made) shall be compensated at the overtime rate pursuant to Section 10.2, except as otherwise specified in this Section 9.7. When such a change is to be made, the Department shall attempt to provide involved employee(s) with: as much advance notice as is possible; and a minimum of eight (8) off-duty hours between work assignments. Such temporary changes in an employee's shift shall not normally exceed thirty (30) calendar days. Nothing in this article shall be construed as a limitation or restriction upon the Department respecting the scheduling of employees and/or the operation of the Department in Public Safety emergency situations as declared by the Chief of Police or the Mayor of the City of Minneapolis.

Subd. (a) ***General Rule***

(i) *Changes Made for Training.* If the employer gives an employee written notice of a change in the employee's normal hours of work prior to the posting of the 28-day work schedule, there shall be no compensation if the change is to accommodate required training for the employee. Once the 28-day schedule is posted, the employer may change the hours of work on a scheduled work day without compensation to accommodate required training for the employee, provided the employer gives the employee at least 14 days advance written notice.

(ii) *No Compensation for Voluntary Changes.* No change of shift compensation is payable for changing an employee's hours of work or days of work if the change is voluntary. "Voluntary" means: a request initiated by an employee; or a request initiated by the employer for which an employee may decline without sanction. Changes for "Career Enrichment Assignments" are considered voluntary. The employer shall grant a shift-change request made by an employee who is on limited duty status resulting from a qualified IOD injury when such request is to allow the employee to attend physical therapy or a medical appointment relating to the injury during on-duty time.

(iii) *Limitation on Compensation With 14-Days' Advance Notice.* When the employer changes the hours of work for a block of consecutive scheduled work days after the posting of the 28-day schedule for reasons other than training or a voluntary change, the change of shift compensation shall be payable only for the first day of the block of consecutive work days

provided the employer gives the employee written notice of the change not less than 14 days in advance.

(iv) *Change of Shift Compensation Paid in Cash.* All change of shift compensation shall be payable in cash. An employee may not elect to be compensated in compensatory time for change of shift compensation. However, if an employee otherwise becomes entitled to overtime for working hours departing from the changed work schedule, such overtime shall be subject to all provisions of Article 10.

Subd. (b) ***Change in Shift – Fitness for Duty.*** Where an unplanned and immediate temporary change in shift is made necessary because of issues relating to the employee's physical or mental fitness for duty, the Department may, at its sole discretion:

(1) change the employee's assignment and work schedule and pay the compensation specified in Paragraph (a) of this section;

(2) change the employee's assignment using the same hours as specified on the employee's posted schedule thereby avoiding the obligation to pay additional compensation; or

(3) offer the employee another assignment with different hours which, if accepted, would be considered a voluntary change in shift for which no additional compensation is payable.

In such circumstances, the employee may use applicable accrued benefits.

Subd. (c) ***Change in Shift – Investigations.*** Where an unplanned and immediate temporary change in shift is made necessary because the employee is under investigation for alleged misconduct, the Department may, at its sole discretion:

(1) change the employee's assignment and work schedule and pay the compensation specified in Paragraph (a) of this section;

(2) change the employee's assignment using the same hours as specified on the employee's posted schedule thereby avoiding the obligation to pay additional compensation; or

(3) offer the employee another assignment with different hours which, if accepted, would be considered a voluntary change in shift for which no additional compensation is payable.

In such circumstances, the employee may use applicable accrued benefits. Any compensation payable under subparagraph (1) of this Paragraph (c) may be held in abeyance until the conclusion of the investigation and the final resolution of any resulting disciplinary action. If a

disciplinary action resulting in a penalty more severe than a letter of reprimand is sustained, the Department shall be relieved of any obligation to pay such compensation.

Section 9.8 – Assignment of Lieutenants. Prior labor agreements between the City and the Federation included a Memorandum of Understanding on the topic of "Duty Assignments" which provided, among other things, that only personnel at or above the rank of lieutenant could be assigned to command a unit. This provision was the subject of many grievances and at least two arbitration cases. The prior Memorandum of Understanding and arbitration decisions arising there under are hereby superseded by the provisions of this Section. The Federation hereby agrees that the Department shall have the right to establish and maintain working groups of employees performing related tasks, provided that: employees are assigned duties and responsibilities consistent with their civil service job classifications, or are receiving additional compensation when working out-of-class; and the Department has articulated a clear chain of command for such work group. The Department agrees that the number of lieutenants in the Department shall not be reduced below four and one-half percent (4.5%) of the greater of the total authorized strength of all sworn personnel of the Department; or the actual number of sworn personnel as determined on July 1 of each year.

ARTICLE 10
OVERTIME

Section 10.1 - Overtime. This article is intended to define and provide the basis for the calculation of overtime pay or compensatory time off, as applicable. Nothing herein shall be construed as a guarantee of overtime work. All employees may be required to work overtime.

Section 10.2 - Overtime and Overtime Pay.

Subd. (a) ***Definition of Overtime***. *Overtime* is defined as any hours of work which deviate from an employee's posted work schedule as described in Section 9.3 of this Agreement unless such deviation is voluntary on the part of the employee or is made necessary by required training activities as provided under Section 9.7 of this Agreement (*Temporary Change in Shifts*), in which case no overtime shall be deemed to have been worked.

Subd. (b) ***Overtime Pay***. Except where an employee has elected to receive overtime pay in the form of compensatory time off, all overtime shall be paid in cash at the rate of one and one-half (1½) times the employee's regular hourly rate. Where compensatory time has been elected, one and one-half (1½) hours of compensatory time shall be accrued for each hour of overtime worked. An employee shall be entitled to elect to receive compensatory time off in lieu of cash payment for overtime at any time the employee's compensatory time bank is 60 hours or less. If the employee's compensatory time bank is more than 60 hours, the Employer shall have the discretion to decide whether to grant or deny a request to receive additional compensatory time off for overtime work. However, overtime worked by an employee to backfill for another employee who is using compensatory time off shall always be compensated in cash.

As a general rule, the department does not allow officers of a higher rank to work in an overtime capacity for officers of a lower rank. However, in instances where it becomes necessary for an officer to backfill for an officer in a lower rank taking compensatory time off under Section 10.2, subd. (d), the officer of higher rank shall always be compensated in cash at 1.5 times the hourly rate for the top step of the wage schedule for the rank of the position being filled.

Subd. (c) ***Payment of Accumulated Compensatory Time***. Once per year, the City shall liquidate the entire compensatory time bank of each employee by cash payment for such accumulated compensatory time. Payment for such time will be made on or before the last paycheck in December and will be based on the number of hours of compensatory time in the employee's compensatory time bank as of the last day of the first payroll period in November at the regular hourly rate of pay for the employee in effect as of the date on which payment is made. Notwithstanding the foregoing, when an employee is promoted to the rank of lieutenant or above, the Employer, in its sole discretion, may liquidate all or any portion of the employee's entire compensatory time bank by paying the employee such hours at his/her current hourly rate (the rate in effect immediately prior to the promotion).

Subd. (d) ***Compensatory Time Off***. An employee who gives notice of the intent to use compensatory time at least seven (7) calendar days in advance shall be granted compensatory time off on the requested date(s) without regard to whether granting such request would cause the employee's shift, precinct, unit or division to fall below the Department's minimum staffing levels. However, the Employer shall not be obligated to grant compensatory time off for consecutive calendar days unless the employee has given notice on or before the due date for requesting days off for the scheduling period in which the compensatory time off is to be taken. An advance request for compensatory time off may be denied for days on which days off and vacations have been cancelled for all of the personnel in the employee's shift, precinct, unit or division. The Employer retains the sole discretion to grant or deny requests to take compensatory time off when the request is made less than one week in advance or, for consecutive days, later than the day for the submitting requests for days off.

Section 10.3 - Call-Back Minimum. Employees called to work during scheduled off-duty hours shall be compensated in the form of compensatory time off at the rate of one and one-half (1½) hours for each hour worked with a minimum of four (4) hours' compensatory time off earned for each such call to work. The minimum of four (4) hours shall not apply when such a call to work is an extension of or early report to a scheduled shift. This provision shall not apply to situations arising out of Section 9.7, *Temporary Change in Shifts*.

Section 10.4 - Standby. Employees properly authorized and required by Department rules to standby for duty shall be compensated at the rate of one (1) times the regular hourly rate, except as specified in the Memorandum of Agreement regarding standby status for specialized investigators attached hereto as Attachment. Time shall be calculated to the nearest one-half (½) hour. The following cancellation provisions shall be effective January 1, 2000. If standby status is canceled prior to 6:00 p.m. on the day preceding the scheduled standby status, the Department shall not be obligated to compensate an employee for standby status. If standby status is canceled after 6:00 p.m. on the day preceding the scheduled standby status, but before 9:00 a.m.

on the day of the scheduled standby status, the Department shall be required to compensate the employee for one (1) hour of standby. If standby status is canceled after 9:00 a.m. on the day of the scheduled standby status, the Department shall be required to compensate the employee for the greater of: two (2) hours of standby; or the compensation specified under this Section 10.4 for time actually served on standby status.

The City shall have three business days to approve or deny the Officer's request for compensation. If not denied within three business days of an Officer's request for any court related compensation, such compensation shall be deemed approved.

Section 10.5 - Court Time and Preparation.

(a) Employees will be compensated for all time required in court or proceedings of the Civilian Review Authority, including time required in *standby* status in anticipation of such appearances when:

(1) The court case is within the scope of the employee's employment and the employee is under subpoena or trial notice for the appearance, a copy of which has been provided to the Department; or

(2) The employee's appearance is required by the Civilian Review Authority.

(b) An employee will be permitted necessary time in consultation with attorneys while on-duty, provided:

(1) The case is within the scope of the employee's employment and,

(2) Prior approval of such on-duty consultation is received from the employee's immediate supervisor.

(c) Employees shall be compensated for all off-duty time spent in consultation with attorneys where:

(1) The City (i.e., the Minneapolis City Attorney, an involved county attorney and/or federal authority) requires the employee's attendance at such meeting, and

(2) The consultation cannot reasonable be rescheduled to the involved employee's normal on-duty hours, and

(3) The same *scope of employment* and *prior approval* criteria outlined in Paragraph 10.5(b), above, are satisfied.

Section 10.6 - Special Overtime Practices.

Subd. (a) ***Employees Serving in Other Agencies by Contract***. The City may enter into an agreement with other law enforcement agencies or other governmental agencies, for the purpose of authorizing employees covered under this Agreement to provide services at the direction of such other agency. An employee who participates in such a program remains an employee of the City. Therefore, such an employee is subject to the rules and regulations of the Department and is entitled to the rights and benefits of this Agreement; except as follows:

(1) such assignment shall be considered "voluntary" so that the scheduling and shift change provisions of Sections 9.3 and 9.7 shall not apply; and

(2) the employee shall obtain prior approval of his/her supervisor in the Minneapolis Police Department before working overtime which would result in compensation to the employee in excess of any amount for which the agency to which he/she/she is assigned is obligated by contract to reimburse the City.

Subd. (b) ***Field Training Officers***. As compensation for the additional duties associated with the assignment, an employee who serves as a Field Training Officer (FTO) shall be paid a premium equal to one and one-quarter (1 1/4) hours at straight time for each work day or part thereof in which he/she/she acts as an FTO with the responsibilities for reporting on the performance of the trainee. An employee may elect to receive such compensation in cash or compensatory time. Such election shall be made at the beginning of the FTO program, or as soon thereafter as is practical, and shall be irrevocable for the duration of the FTO program for that class of recruits. Such compensation shall be in addition to the employee's regular compensation for the hours actually worked. The Department will attempt to staff its FTO program with volunteers, but reserves the right to reject a volunteer who it determines is not appropriate to serve as an FTO and to assign employees to FTO duties if the needs of the Department cannot be fully staffed by volunteers. The Department will use its best efforts to reasonably limit the number of consecutive months during which it will involuntarily assign an employee to FTO duties.

Subd. (c) ***Buy-Back Policing***. Participation in the Department's *Buy-Back* is voluntary. An employee who works buy back shall be paid cash compensation for all hours worked therein at one and one-half (1 ½) times the employee's regular hourly rate or, if working under the contract between Hennepin County and the Department for the detox van or a contract between the Department and an officially recognized community organization under the Neighborhood Revitalization Program, the rate specified in such contract.

For purposes of this unique overtime practice, Buy-Back Policing shall mean community crime prevention, special investigative, and other law enforcement activities normally within the scope of the authority conferred upon the Department by the City Charter. Additional activities may be added only upon the express written agreement of the Parties.

Buy-back opportunities shall be available to all employees in the ranks of patrol officer, sergeant and lieutenant on a non-discriminatory, consistent basis. Each precinct shall maintain a system of posting buy-back opportunities that includes a description of the duties and the available dates and times so that any interested and eligible employee can sign-up for such duties. The employer shall designate a precinct affiliation for non-precinct employees who desire to work buy-back assignments. Buy-back assignments shall be available, subject to reasonable restrictions to ensure fairness to all eligible employees, on a "first-come, first-served" basis among the employees working at or affiliated with the posting precinct. If the buy-back assignments cannot be filled from within the precinct, the employer may fill such assignments by providing an equal opportunity for volunteers from outside the precinct.

Subd. (d) ***Canine Maintenance Compensation.***

(1) Canine Maintenance Premium. As compensation for the additional canine maintenance duties associated with the assignment to canine officer, an employee who serves as a canine officer shall be paid in cash as follows with regard to the one (1) hour of required canine maintenance: on a day on which a canine officer is scheduled to work, the one (1) hour shall be paid at straight time (one times the officer's regular hourly rate); and on a day that the officer is not scheduled to work, the officer shall be paid at the premium rate of one and one-quarter (1 ¼) times the officer's regular hourly rate.

(2) Veterinary Care. Time spent in obtaining veterinary care for a canine shall be treated as hours worked. A canine officer shall use his/her best efforts to arrange for veterinary care during his/her scheduled duty time. However, if the time of day during at the officer is obtaining veterinary care departs from his/her posted work schedule, such departure shall be considered as a "voluntary change of shift" under Section 9.7 of the Labor Agreement.

(3) Canine Squad Cars. The parties acknowledge that to facilitate transportation of a canine and to provide an additional benefit to canine officers for canine maintenance at home and during off-duty hours, canine officers shall be provided with a squad care that may be used to transport the officer and his/her canine between work and home. The Department retains the discretion to determine the type of vehicle and the equipment installed thereon, except that the vehicle and equipment shall be consistent with Department standards for use in marked patrol and 911 response.

Section 10.7 – Holidays.

Subd. (a). *Major Holidays.* Employees shall be compensated at the overtime rate for all hours worked during any shift which begins on Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas Day. The parties hereby agree that an employee's "regular hourly rate" on each of the qualifying holidays is 1.5 times the employee's hourly rate in effect for work days other than such holidays

and, therefore, when an employee works "overtime," as defined by Section 10.2, Subd. (a) of the Labor Agreement, on one of the qualifying holidays or as an extension of a shift that qualifies for holiday pay under Section 10.7 of the Labor Agreement, the effective rate of pay for such overtime hours is 2.25 times the employee's normal (non-holiday) hourly rate. The additional compensation payable for working on one of these holidays shall be payable in cash. However, the employee may, subject to the provisions of Section 10.2, elect to receive cash or compensatory time for overtime worked on a holiday.

Subd. (b). *Other Holidays.* In lieu of additional compensation with regard to the other holidays recognized in Section 13.1, commencing with the 2011 payroll year, and continuing thereafter, on the first day of the payroll year each employee shall be credited with a holiday time bank consisting of the number of hours of two (2) regular work days. The employee's "regular work day" shall be determined based on the employee's assignment as of the first day of the payroll year. Requests for holiday time off shall be considered by supervisors on the same basis as vacation requests. Holiday time does not carry over from year to year and, therefore; holiday time banks will revert to zero as of 11:59 p.m. on the last day of each payroll year. Accrued but unused holiday time off at the time of an employee's separation from service shall be forfeited and, therefore, no compensation shall be payable for such accrued time.

Section 10.8 - No Duplication of Overtime. Compensation shall not be paid more than once for the same hours under any provision of this Agreement.

ARTICLE 11
LAYOFF AND RECALL FROM LAYOFF

Section 11.1 - Layoffs and Bumping. Whenever it becomes necessary because of lack of funds or lack of work to reduce the number of employees in any rank, the Chief of Police shall immediately report such pending layoffs to the City Coordinator or his/her designated representative. The status of involved employees shall be determined by the following provisions and the involved employees will be notified.

Definitions.

1. A "lay off" is when an employee loses his/her position due to a lack of funds or work even if the action results in the demotion of the employee rather than interruption of his/her employment.

2. "Bumping" is when an employee who is laid off exercises his/her right to take a position in a lower rank from an employee with less Classification seniority.

Subd. (a) ***General Order of Layoff***. Layoffs shall be made in the following manner:

(1) *Permit* employees shall be first laid off;

(2) Temporary employees (those certified to temporary positions) shall next be laid off;

(3) Persons appointed to permanent positions shall then be laid off.

Subd. (b) ***Layoff Based on Classification Seniority***. The employee first laid off shall be the employee who has the least amount of classification seniority in the rank in which reductions are to be made. Provided, however, employees retained must be deemed qualified to perform the required work and employees who possess unique skills or qualifications which would otherwise be denied the Employer may be retained regardless of their relative seniority standing.

Subd. (c) ***Bumping***. Employees above the rank of patrol officer who are laid off shall have their names placed on a demotion list for their classification. Such employees who have at least two (2) years of City seniority shall have the right to displace (*bump*) the employee of lesser City seniority who was last certified to the next lower rank previously held permanently by the laid off employee. If the laid off employee cannot properly displace any employee in the next lower rank, such laid off employee shall have the right to displace (bump) the employee of lesser City seniority who was the last certified to progressively lower ranks previously held permanently by the laid off employee and in which job performance was deemed by the Employer to be satisfactory. In all cases, however, the bumping employee must meet the current minimum qualifications of the claimed position and must be qualified to perform the required work.

Section 11.2 - Notice of Layoff. The Employer shall make every reasonable effort under the circumstances to provide affected employees with at least fourteen (14) calendar days notice prior to the contemplated effective date of a layoff.

Section 11.3 - Recall from Layoff. A Patrol Officer who has been laid off may be reemployed without examination in a vacant position of the same rank within three (3) years of the effective date of the layoff. Failure to receive an appointment within three (3) years will result in the eligible's name being removed from the layoff list. However, the eligibility of an employee on the layoff list shall be extended for a period of military service while laid off upon notice to the Employer by the employee of such military service. An employee who was laid off and had his/her name placed on a demotion list shall be entitled to return to the job classification from which he/she was laid off before a vacancy in such job classification is filled from a promotional list.

Section 11.4 - Effect on Appointed Positions. Employees who hold a rank within the classified service but are serving in an unclassified or appointed position within the City cannot be displaced (*bumped*) within the meaning of this article by other bargaining unit employees during

the time such employees hold their appointed positions. In the event such a person is removed from his/her appointed position he/she/ shall have the right to return to his/her last-held civil service rank. The return of such person shall not result in the removal (bumping) of another person in such rank. To the extent such removal causes there to be an excess above the authorized strength at such rank, the excess shall be reduced through attrition.

Section 11.5 - Exceptions. The following exceptions may be observed:

(a) Mutual Agreement. If the Employer and the Federation agree upon a basis for layoff and reemployment in a certain position or group of positions and such agreement is approved by the City Coordinator or his/her designated representative, employees will be laid off and reemployed upon that basis.

(b) Emergency Retention. Regardless of the priority of layoff, an employee may be retained on an emergency basis for up to fourteen (14) calendar days longer to complete an assignment.

ARTICLE 12
VACATIONS

Section 12.1 - Eligibility: Full-Time Employees. Vacations with pay shall be granted to permanent employees who work one-half (½) time or more. Vacation time will be determined on the basis of continuous years of service, including time in a classified or unclassified position immediately preceding appointment or reappointment to a classified position. For purposes of this article, *continuous years of service* shall be determined in accordance with the following:

(a) Credit During Authorized Leaves of Absence. Time on authorized leave of absence without pay, except to serve in an unclassified position, shall not be credited toward years of service, but neither shall it be considered to interrupt the periods of employment before and after leave of absence, provided an employee has accepted employment to the first available position upon expiration of the authorized leave of absence.

(b) Credit During Involuntary Layoffs. Employees who have been involuntarily laid off shall be considered to have been continuously employed if they accept employment to the first available position. Any absence of twelve (12) consecutive months will not be counted toward years of service for vacation entitlement.

(c) Credit During Periods on Disability Pension. Upon return to work, employees shall be credited for time served on workers' compensation (those returning to active employment after January 1, 1996) or disability pension as the result of disability incurred on the job. Such time shall be used for the purpose of

determining the amount of vacation to which they are entitled each year thereafter.

(d) Credit During Military Leaves of Absence. Employees returning from approved military leaves of absence shall be entitled to vacation credit as provided in applicable Minnesota statutes.

Section 12.2 - Vacation Benefit Levels. Effective January 1, 2004 eligible employees shall earn vacations with pay in accordance with the following schedule:

Employee's Credited Continuous Service	**Working Days' Vacation per Year**
One through Four Years	96 Hours
Five through Seven Years	120 Hours
Eight through Nine Years	128 Hours
Ten through Fifteen Years	144 Hours
Sixteen through Seventeen Years	168 Hours
Eighteen through Twenty Years	176 Hours
Twenty-One or more Years	208 Hours

Section 12.3 - Vacation Accruals and Calculation. The following shall be applicable to the accrual and usage of accrued vacation benefits:

(a) Accruals and Maximum Accruals. Vacation benefits shall be calculated on a direct proportion basis for all hours of credited work other than overtime and without regard to the calendar year. Benefits may be cumulative up to and including four hundred (400) hours. Accrued benefits in excess of four hundred (400) hours shall not be recorded and shall be considered lost.

(b) Negative Accruals Permitted. Employees certified to permanent positions shall be allowed to accrue a negative balance in their vacation account. Such amount shall not exceed the anticipated earnings for the immediately succeeding twelve (12) month period. The anniversary date for increase in such employee's vacation allowance shall be January 1, of the year in which the employee's benefit level is changed. Employees separating from the service will be required to refund vacation used in excess of accrual at the time of separation, if any.

(c) Vacation Usage and Charges Against Accruals. Vacation shall begin on the first working day an employee is absent from duty. When said vacation includes a holiday, the holiday will not be considered as one of the vacation days.

(d) Vacation Credit Pay. All bargaining unit employees shall be entitled to elect to receive compensation for vacation time that will be earned in the subsequent year

in accordance with the terms of this paragraph. Not less than thirty (30) days prior to the beginning of the payroll year during which the vacation subject to such election is accrued (hereafter the "Accrual Year"), employees may elect to receive payment for up to forty (40) hours of vacation time that will be accrued during the Accrual Year. Such election, once made, shall be irrevocable. Thus, the hours elected for compensation shall not be eligible for use as vacation. Payment to the employee who has elected to receive payment shall be based on the employee's regular base rate of pay in effect on December 31 of the Accrual Year. The vacation credit pay shall be paid to the employee within sixty (60) days after the end of the Accrual Year. Employees, at their sole option, may authorize and direct the Employer to deposit vacation credit pay to a deferred compensation plan administered by the Employer provided such option is exercised in a manner consistent with the provisions governing regular changes in deferred compensation payroll deductions.

Section 12.4 - Vacation Pay Rates.

Subd. (a) ***Normal***. The rate of pay for vacations shall be the rate of pay employees would receive had they been working at the position to which they have been permanently certified, except as provided in Paragraph (b), below.

Subd. (b) ***Detailed (Working Out of Class) Employees***. Employees on *detail* (working out of class) for a period of less than thirty (30) calendar days immediately prior to vacation will be paid upon the basis of the position to which they have been permanently certified. Employees on detail for more than thirty (30) calendar days immediately prior to vacation will be paid upon the basis of the position to which they have been detailed.

Section 12.5 - Scheduling Vacations. Vacations are to be scheduled in advance and taken at such reasonable times as approved by the employee's immediate supervisor with particular regard for the needs of the Employer, the seniority of employee in his/her rank, and, insofar as practicable, the wishes of the employee. No vacation shall be assigned by the Employer or deducted from the employee's account as disciplinary action.

Section 12.6 – Payment for Unused Vacation on Separation. Effective April 6, 2003 the value of any vacation balance due upon voluntary separation shall be deposited into the employees Post Retirement Health Care Savings Plan, as established in Minn. Stat. §352.98 as administered by the Minnesota State Retirement System.

ARTICLE 13
HOLIDAYS

Section 13.1 - General. Each permanent, full-time employee shall be entitled to twelve (12) days leave per year in lieu of holiday leave. These twelve (12) days will be used as directed by the Chief of Police in the current year giving reasonable consideration to the request of the

employee. The following days shall be observed as paid holidays for all permanent, full-time employees:

New Year's Day
Martin Luther King, Jr. Day
President's Day
Memorial Day
Independence Day
Labor Day
Columbus Day
Veterans Day
Thanksgiving Day
Day after Thanksgiving
Christmas Day

The employer retains the right to require employees to work on holidays. If an employee is scheduled to work on the holiday, the employer shall schedule a day off with pay as an alternate holiday for the employee during the same 28-day scheduling period as the actual holiday. At the employer's sole discretion, it may pay the employee in cash for one normal workday in lieu of scheduling an alternate day off. Employees who are eligible for holiday pay shall also receive one (1) floating holiday per calendar year. Floating holidays may not be carried over if not used during the calendar year.

Section 13.2 - Religious Holidays. An employee may observe religious holidays which do not fall on the employee's regularly scheduled day off. Such religious holidays shall be taken off without pay unless: 1) the employee has accumulated vacation benefits available in which case the employee shall be required to take such holidays as vacation; or 2) the employee obtains supervisory approval to work an equivalent number of hours (at straight-time rates of pay) at some other time during the calendar year. The employee must notify the Employer at least ten (10) calendar days in advance of his/her religious holiday of his/her intent to observe such holiday. The Employer may waive this ten (10) calendar day requirement if the Employer determines that the absence of such employee will not substantially interfere with the department's function.

ARTICLE 14
LEAVES OF ABSENCE WITH PAY

Section 14.1 - Leaves of Absence With Pay. Leaves of absence with pay may be granted to permanent employees under the provisions of this article when approved in advance by the Employer prior to the commencement of the leave.

Section 14.2 - Funeral Leave. A leave of absence with pay of three (3) working days shall be granted in the event a permanent employee suffers a death in his/her immediate family. "Immediate family" means the employee's parent, stepparent, spouse, *registered domestic*

partner within the meaning of Minneapolis *Code of Ordinances* Chapter 142, child, stepchild, brother, sister, stepbrother, stepsister, father-in-law, mother-in-law, grandparent or grandchild, or members of employees' households. For purposes of this subdivision, the terms *father-in-law* and *mother-in-law* shall be construed to include the father and mother of an employee's domestic partner.

Additional time off without pay, or vacation, if available and requested in advance, shall be granted as may reasonably be required under individual demonstrated circumstances.

Section 14.3 - Jury Duty and Court Witness Leave. After due notice to the Employer, employees subpoenaed to serve as a witness or called for jury duty, shall be paid their regular compensation at their current base rate of pay for the period the court duty requires their absence from work duty, plus any expenses paid by the court. Such employees, so compensated, shall not be eligible to retain jury duty pay or witness fees and shall turn any such pay or fees received over to the Employer. If an employee is excused from jury duty prior to the end of the normal workday, he/she/she shall return to work if reasonably practicable or make arrangements for a leave of absence without pay. For purposes of this section, such employees shall be considered to be working normal day shift hours for the duration of their jury duty leave. This section shall not apply to a) any absence arising from the employee's participation in litigation where such participation is within the scope of the employment of such employee - such absences shall be compensated pursuant to the terms of Section 10.5 (*Court Time and Preparation*) of this Agreement; or b) any absence, whether voluntary or by legal order to appear or testify in private litigation, not in the status of an employee but as a plaintiff or defendant - such absences shall be charged against accumulated vacation, compensatory time or be without pay.

Section 14.4 - Military Leave With Pay. Pursuant to applicable Minnesota statutes, eligible employees shall be granted leaves of absence with pay during periods not to exceed fifteen (15) working days in any calendar year to fulfill service obligations.

Section 14.5 - Olympic Competition Leave. Pursuant to applicable Minnesota statutes, employees are entitled to leaves of absence with pay to engage in athletic competition as a qualified member of the United States team for athletic competition on the Olympic level, provided that the period of such paid leave will not exceed the period of the official training camp and competition combined or ninety (90) calendar days per year, whichever is less.

Section 14.6 - Bone Marrow Donor Leave. Pursuant to applicable Minnesota statutes, employees who work twenty (20) or more hours per week shall, upon advance notification to their immediate supervisor and approval by the Employer, be granted a paid leave of absence at the time they undergo medical procedures to donate bone marrow. At the time such employees request the leave, they shall provide to their immediate supervisor written verification by a physician of the purpose and length of the required leave. The combined length of leaves for this purpose may not exceed forty (40) hours unless agreed to by the Employer in its sole discretion.

Section 14.7 - Injury on Duty. The Chief of Police, with approval of the Civil Service Commission if necessary, shall grant an employee Injury On Duty (IOD) leave of absence with

pay for a physical disability incurred in the performance of law enforcement duty for a period of up to one hundred eighty (180) calendars days in accordance with the length of the disability. Disability incurred in the performance of duties peculiar to law enforcement will apply only to leave necessitated as the direct and approximate result of an actual injury or illness whether or not considered compensable under the Minnesota Workers' Compensation law. Disability resulting from each new injury or illness incurred in the performance of law enforcement duty, or a recurrent disability resulting directly from a previous injury or illness sustained in the performance of law enforcement duty, will be compensable pursuant to, and where otherwise not in conflict with, the provisions of this section. Such leave will not apply to disabilities incurred as the direct result of substantial and wanton negligence or misconduct of the disabled employee. The following conditions shall apply to IOD leave:

(a) When employees exhaust the one hundred eighty (180) days as provided in this section but remain disabled, they will be required to then expend their regular earned sick leave and vacation leave in order to obtain compensation during the period of continuing leave of absence resulting from the disability. When the employee has exhausted his/her sick leave and vacation and still is disabled, the Employer may grant the employee additional disability leave in an amount up to ninety (90) working days. To be eligible for such additional IOD leave, the City's health care provider must certify that the employee will be able to return to the full performance of his/her duties at the expiration of such extended leave.

(b) When an employee returns to work following his/her use of earned sick leave or vacation or during the period which they are on extended leave as provided above, regular earned sick leave will be restored to the employee as follows:

Sick Leave Days at the Time of Exhaustion of the Original 180 Days	Restored Days (Maximum)
0 - 59	0 (no sick leave restored)
60 - 99	20
100 - 199	45
200 or More	90

Section 14.8 - Return from Leaves of Absence With Pay. When an employee is granted a leave of absence with pay under the provisions of this article, such employee, at the expiration of such leave, shall be restored to his/her position.

ARTICLE 15
LEAVES OF ABSENCE WITHOUT PAY

Section 15.1 - Leaves of Absence Without Pay. Leaves of absence without pay may be granted to permanent employees when authorized by Minnesota statute or by the Employer pursuant to

the provisions of this article upon written application to the employee's immediate supervisor or his/her designated representative. Except for emergency situations, leaves must be approved in writing by the Employer prior to commencement.

Section 15.2 - Leaves of Absence Governed by Statute. The following leaves of absence without pay may be granted as authorized by applicable Minnesota statutes:

(a) Military Leave. Employees shall be entitled to military leaves of absence without pay for duty in the regular Armed Forces of the United States, the National Guard or the Reserves. At the expiration of such leaves, such employees shall be entitled to their position or a comparable position and shall receive other benefits in accordance with applicable Minnesota statutes. (See also, *Military Leave With Pay* at Article 14, Section 14.4 of this Agreement.)

(b) Appointive and Elective Office Leave. Leaves of absence without pay to serve in an unclassified or appointed City position or as a Minnesota State Legislator or full-time elective officer in a city or county of Minnesota shall be granted pursuant to applicable Minnesota statutes. A vacancy created by a leave to allow an employee to serve in an appointed position or an elected position, other than in the Minnesota Legislature, shall be deemed a "permanent vacancy" meaning that the vacancy may not be filled by a detail. A vacancy created by a leave to allow an employee to serve in an elected office in the Minnesota Legislature shall be deemed a "temporary vacancy," meaning that that the vacancy may be filled by a detail under Section 30.5, so long as the legislative office is deemed "part-time." If an employee returns from such a leave, he/she shall have the right to return to his/her last-held civil service rank. The return of such person shall not result in the removal (bumping) of another person in such rank, except when the person is returning to the rank of Captain. To the extent such return from a leave of absence under this Section causes there to be an excess above the authorized strength at the rank of Patrol Officer, Sergeant or Lieutenant, the excess shall be reduced through attrition.

(c) School Conference and Activities Leave. Leaves of absence without pay of up to a total of sixteen (16) hours during a school year for the purpose of attending school conferences and classroom activities of the employee's child, provided that such conferences and classroom activities cannot be scheduled during non-work hours. When the need for the leave is foreseeable, the employee shall provide reasonable prior notice of the leave to their immediate supervisor and shall make a reasonable effort to schedule the leave so as not to disrupt the operations of the Employer. Employees may use accumulated vacation benefits or accumulated compensatory time for the duration of such leaves.

(d) Family and Medical Leaves

(1) General. Pursuant to the provisions of the federal *Family and Medical Leave Act of 1993* and the regulations promulgated there under (which shall govern employee rights and obligations as to family and medical leaves wherever they may conflict with the provisions of this paragraph), leaves of absence of up to twelve (12) weeks in any twelve (12) months will be granted to eligible employees who request them for the following reasons:

(A) for purposes associated with the birth or adoption of a child or the placement of a child with the employee for foster care,

(B) when they are unable to perform the functions of their positions because of temporary sickness or disability, and/or

(C) when they must care for their parent, spouse, *registered domestic partner* within the meaning of Minneapolis *Code of Ordinances* Chapter 142, child, or other dependents and/or members of their households who have a serious medical condition.

Unless an employee elects to use accumulated paid leave benefits while on family and medical leaves (see subparagraph (6), below), such leaves are without pay. The Employee's group health, dental and life insurance benefits shall, however, be continued on the same basis as if the employee had not taken the leave.

(2) Eligibility. Employees are eligible for family and medical leaves if they have accumulated at least twelve (12) months employment service preceding the request for the leave and they must have worked at least one thousand forty-four (1,044) hours during the twelve (12) month period immediately preceding the leave. Eligible spouses or registered domestic partners who both work for the Employer will be granted a combined twelve (12) weeks of leave in any twelve (12) months when such leaves are for the purposes referenced in clauses (a) and (c) above.

(3) Notice Required. Employees must give thirty (30) calendar days notice of the need for the leave if the need is foreseeable. If the need for the leave is not foreseeable, notice must be given as soon as it is practicable to do so. Employees must confirm their verbal notices for family and medical leaves in writing. Notification requirements may be waived by the Employer for good cause shown.

(4) Intermittent Leave. If medically necessary due to the serious medical condition of the employee, or that of the employee's spouse, child, parent, *registered domestic partner* within the meaning of Minneapolis *Code of Ordinances* Chapter 142, or other dependents and/or members of their households who have a serious medical condition, leave may be taken on

an intermittent schedule. In cases of the birth, adoption or foster placement of a child, family and medical leave may be taken intermittently only when expressly approved by the Employer.

(5) Medical Certification. The Employer may require certification from an attending health care provider on a form it provides. The Employer may also request second medical opinions provided it pays the full cost required.

(6) Relationship Between Leave and Accrued Paid Leave. Employees may use accrued vacation, sick leave or compensatory time while on leave. The use of such paid leave benefits will not affect the maximum allowable duration of leaves under this subdivision.

(7) Reinstatement. Upon the expiration of family and medical leaves, employees will be returned to an equivalent position within their former job classification. Additional leaves of absence without pay described elsewhere in this Agreement may be granted by the Employer within its reasonable discretion, but reinstatement after any additional leave of absence without pay which may have been granted by the Employer in conjunction with family and medical leaves, is subject to the limitations set forth in Section 15.3 (*Leaves of Absence Governed by this Agreement*) of the Agreement.

Section 15.3 - Leaves of Absence Governed by this Agreement. Employees may be granted leaves of absence for the purpose set forth in this section provided that such leaves are consistent with the provisions of this section. Except as otherwise provided in this Section 15.3: a leave of absence granted may not be renewed or extended without the expressed mutual consent of the Parties; an employee on leave in excess of six (6) months will, at the expiration of the leave, be placed on an appropriate layoff list for his/her classification if no vacancies exist in such classification; and an employee on leave of less than six (6) months will, at the expiration of the leave, return to a position within his/her classification.

(a) Temporary illness or injury. A leave of absence for illness or injury to the employee or to provide care for a member of the employee's immediate family may be granted for up to 12 months. The employer may require that the condition be properly verified by medical authority. Upon the expiration of the leave, the employee will return to a position, determined at the discretion of the Chief, within his/her job classification. If the employee is physically unable to return to work upon the expiration of the leave, he/she will be placed on a medical layoff upon exhausting all accrued leave banks (vacation, sick leave, compensatory time). An employee may remain on the medical layoff/recall list for up to three (3) years.

If an employee is able to return to work upon the determination that he/she is fit for duty prior to the expiration of the layoff, he/she shall have the right to return to a vacancy in his/her last-held civil service rank. If there is no vacancy, the employee shall be entitled to a vacancy in the highest rank below his/her last-held civil service rank where there is a vacancy and shall be considered "on layoff" from his/her last-held civil service rank, subject to recall to the next available vacancy in that rank.

The vacancy created by a leave of absence for temporary illness or injury shall be considered a "temporary vacancy," meaning that the vacancy may be filled by a detail under Section 30.5 for up to twelve (12) months. The vacancy shall be deemed "permanent," thus requiring the termination of a detail, if the employee is unable to return to work upon the expiration of the leave or, prior to the expiration of the leave, the employee separates from service.

(b) *Education.* A leave of absence may be granted to allow an employee to pursue an educational opportunity that benefits the employee to seek advancement opportunities within the City or carry out job-related duties more effectively. The leave may be granted for a period of up to 12 months and may, at the discretion of the Chief, be renewed one time for up to an additional 12 months. A vacancy created by an initial education leave of twelve (12) months or less shall be deemed a "temporary vacancy" meaning that the vacancy may be filled by a detail under Section 30.5. A vacancy created by an initial education leave of more than twelve (12) months or any renewal of an initial education leave shall be deemed a "permanent vacancy" meaning that the vacancy may not be filled by a detail. If an employee returns from such a leave, he/she shall have the right to return to a vacancy in his/her last-held civil service rank. If there is no vacancy, the employee shall be entitled to a vacancy in the highest rank below his/her last-held civil service rank where there is a vacancy and shall be considered "on layoff" from his/her last-held civil service rank, subject to recall to the next available vacancy in that rank.

(c) *Other Employment.* A leave of absence of up to six (6) months may be granted to allow an employee to serve in a position with another employer where such employment is deemed by the Employer to be in the best interests of the City and will be deemed a "temporary vacancy" meaning that the vacancy may be filled by a detail under Section 30.5. If the employee does not return to work immediately following the expiration of such leave, the vacancy created by the employee's decision to pursue other employment shall become a "permanent vacancy" meaning that any detail that had been used to fill the vacancy must terminate and the resulting vacancy may no longer be filled by a detail. If an employee returns from such a leave, he/she shall have the right to return to a vacancy in his/her last-held civil service rank. If there is no vacancy, the employee shall be entitled to a vacancy in the highest rank below his/her last-held civil service rank where there

is a vacancy and shall be considered "on layoff" from his/her last-held civil service rank, subject to recall to the next available vacancy in that rank.

(d) *Candidate for Public Office*. A leave of absence of up to 12 months may be granted to allow an employee to become a candidate in an election for public office. A leave of absence without pay commencing thirty calendar days prior to the election is required, unless exempted by the Employer. A vacancy created by such a leave of six (6) months or less shall be deemed a "temporary vacancy" meaning that the vacancy may be filled by a detail under Section 30.5. A vacancy created by such a leave of more than six (6) months shall be deemed a "permanent vacancy" meaning that the vacancy may not be filled by a detail. If an employee returns from such a leave, he/she shall have the right to return to a vacancy in his/her last-held civil service rank. If there is no vacancy, the employee shall be entitled to a vacancy in the highest rank below his/her last-held civil service rank where there is a vacancy and shall be considered "on layoff" from his/her last-held civil service rank, subject to recall to the next available vacancy in that rank.

(e) *Personal Convenience.* A leave of absence of up to six (6) months may be granted for the personal convenience of the requesting employee. A vacancy created by such a leave shall be deemed a "temporary vacancy" meaning that the vacancy may be filled by a detail under Section 30.5. If the employee does not return to work immediately following the expiration of such leave, the vacancy created by the employee's absence shall become a "permanent vacancy" meaning that any detail that had been used to fill the vacancy must terminate and the resulting vacancy may no longer be filled by a detail. If an employee returns from such a leave, he/she shall have the right to return to a vacancy in his/her last-held civil service rank. If there is no vacancy, the employee shall be entitled to a vacancy in the highest rank below his/her last-held civil service rank where there is a vacancy and shall be considered "on layoff" from his/her last-held civil service rank, subject to recall to the next available vacancy in that rank.

(f) *Additional Parenting Leave*. A leave of absence of up to twelve (12) consecutive weeks may to granted to an employee who has exhausted his/her FMLA leave resulting from the birth or adoption of a child and who requests additional parenting leave. A vacancy created by such a leave shall be deemed a "temporary vacancy" meaning that the vacancy may be filled by a detail under Section 30.5. During an additional parenting leave, an employee shall continue to accrue seniority and shall be entitled to work off-duty jobs in uniform under the same terms and conditions that apply to active employees. If both parents of the child work for the City of Minneapolis: the additional parenting leave of up to twelve (12) weeks shall be split between the parents (to the extent that both parents request the additional leave); and the Employer shall continue to pay the Employer portion of the health insurance premium, HRA/VEBA contribution and dental insurance premium for an employee who has elected such coverages while

such employee is on the additional parenting leave.

(g) *Holiday Donation for Federation Business*. Employees shall be relieved from their regularly scheduled duties to engage in Federation activities in accordance with the terms of this section.

(1) Federation Personnel. The Federation President and/or any personnel he/she/ may designate to work exclusively on Federation business on a permanent basis (the "full-time personnel") will be assigned to the Human Resources Unit of the Administrative Services Division and shall continue as employees of the Department with all rights, benefits and obligations relating thereto. Members of the Federation Board of Directors or other Federation members (the "temporary personnel") shall, from time to time, be relieved from performing their regularly assigned work duties to allow them to engage in Federation business. In order to minimize the disruption to the Department which may be caused by the absence of an employee on leave to conduct Federation business, the Federation shall provide advance written notice to the Department as follows:

(A) if the employee will be working exclusively on Federation business for more than six consecutive months (the "full-time personnel"), such notice shall be given as soon as practical but in no event less than sixty days prior to the commencement of the assignment to the Federation;

(B) if the employee will be working exclusively on Federation business for more than one but less than six consecutive months, such notice shall be given as soon as practical but in no event less than thirty days prior to the commencement of the assignment to the Federation;

(C) if the employee will be working on Federation business for all or part of less than thirty-one consecutive days, such notice shall be given as soon as practical but in no event less than fifteen days prior to the posting of the schedule for the scheduling period in question.

Notwithstanding the foregoing, if the employee is seeking a leave from his/her regular work duties to work on Federation business of a nature for which neither the Federation nor the employee could sufficiently plan in advance, the Federation shall give such notice as soon as is practical. However, the parties agree that the Department retains the right to limit such an unplanned leave to three consecutive workdays. For the purpose of the foregoing limitation, "work

days" are days on which the affected employee was scheduled to work at his/her regular assignment. The Federation agrees that it will not seek a leave of absence of more than thirty-one consecutive days for an employee to work exclusively on Federation business during the months of June, July and August. This limitation shall not apply to the "full-time personnel."

The Federation shall have the right and responsibility to direct the activities of personnel while such personnel are engaged in Federation business pursuant to this paragraph.

(2) Donated Time Account. Once each payroll year, one (1) holiday from the total number of holidays allowed pursuant to Article 13 of this Agreement shall be debited from the account of each member of the Federation and shall be credited to a Donated Time Account. The payroll section of the Minneapolis Police Department shall maintain an up-to-date and accurate system of accounting for the accumulation and use of donated time. The payroll section shall contact the Federation office at least once per month to advise the Federation of the balance in this account. Any discrepancies in accounting will be corrected promptly. Up to four hundred (400) hours of unused donated time may be carried over to the next payroll year. Each payroll period, the Federation will contact the Payroll Clerk in the Human Resources Unit to report the hours worked during the payroll period by the full-time and temporary Federation personnel. The number of hours absent from duty and which are spent on Federation business will be debited from the donated time account, except that vacation days, sick days, and compensatory time used, shall not be debited from the donated time account. The parties acknowledge that the start time and/or end time entered into the payroll system may or may not reflect the start or end time of Federation Hours actually worked.

(h) *Special Rule for Patrol Officers.* An employee in the rank of Patrol Officer who is eligible to return to work following a leave of absence granted under this Section 15.3, shall have the right to return to work as a Patrol Officer regardless of whether a vacancy exists at the time he/she is ready to return to work, except when there is no vacancy due to a reduction in the number of budgeted "full time employees" in the rank of Patrol Officer that occurred while the employee was on a leave of absence. In that event, the employee may, at the time he/she is eligible to return to work, displace an employee in the rank of Patrol Officer with lesser seniority and the employee with the least seniority may be laid off subject to the provisions of Article 11.

(i*) Consecutive Leaves of Absence Prohibited.* Unless the Parties mutually agree, an employee who is granted a leave of absence for one of the circumstances described in subparagraphs (b) through (e) of this Section 15.3 must return to work and remain in paid status for at least six (6) months before he/she may be granted another leave of

absence for one of the circumstances described in subparagraphs (b) through (e) of this Section.

Section 15.4 – Budgetary Leaves of Absence.

Budgetary leaves of absence may be granted to employees when, in the Employer's sole discretion, it is necessary to reduce its operating budget. Such leaves shall be without pay, however, seniority, vacation, sick leave, and insurance benefits shall not be interrupted or lost on account of the leave. Budget leaves may not be: 1) imposed involuntarily on employees or 2) approved for any other purpose. At the expiration of a budgetary leave, the employee shall return to his/her department in a position within his/her classification.

a. *Continuous Leave.* An employee may request a leave of absence for a continuous period of not less than four weeks and not more than 12 months. Such leave shall be taken in increments of not less than one week. To be eligible for the leave, the employee must notify the Employer in writing on or before November 1 of the year prior to the calendar year in which the leave is to occur. Such written notice shall include the requested starting and ending date of the leave. Once granted by the Employer, the employee must take such leave during the period requested and may not return to work unless the Employer, in its sole discretion agrees.

b. *Intermittent Leave.* An employee who has not taken or committed to a continuous budgetary leave during any calendar year, may request an intermittent unpaid leave of absence for up to 90 days during any calendar year. Such leave may be taken intermittently in increments of not less than one day and not more than 90 days.

   (1) *With Binding Commitment.* Intermittent budgetary leave *shall* be granted (subject to the business needs of the Department) if requested by the employee in writing on or before November 1st for leave to be taken in the following payroll year. The written request must specify the number of days of unpaid leave to be taken by the employee. Once the request is received by the Employer, the employee must take unpaid leave in the amount requested, unless the Employer in its sole discretion, agrees. To take the time off, the employee shall notify the Employer at least 30 days before the beginning of the 28-day scheduling period of the days he/she wants off during that scheduling period. Requests for leave made on less than 30 days notice may be granted or denied by the Employer on the same terms as a request for vacation, however, the Employer shall use its best efforts to accommodate the requests of the Employee. If the Employee has not exhausted his/her leave or designated the days on which he/she will be off on or before September 1, the Employer may schedule the time off at its discretion, but shall attempt to do on days mutually agreeable to the employee.

(2) *Without Binding Commitment*. Intermittent budgetary leave *may* be granted if requested by the employee after the deadlines set forth in subsection (1), above. Notwithstanding such request, the employee is not obligated to take such leave. However, the Employer is also not obligated to grant the request. Requests for unpaid intermittent leave without a binding commitment shall be subordinate to requests for vacation and compensatory time off. The employee shall attempt to give the Employer as much advance notice as is reasonably practical.

c. During such budgetary leave of absence, an employee shall continue to accrue vacation, sick leave and seniority and the Employer shall continue to pay the Employer's portion of any health, dental or life insurance premiums in effect with regard to such employee immediately prior to the commencement of such leave. Similarly, the employee shall continue to pay any monthly employee portions in order to maintain benefit levels.

d. During an intermittent budgetary leave, an employee shall be entitled to work off-duty jobs in uniform under the same terms and conditions that apply to active employees.

Section 15.4 – Background Check for Employees Returning to Work After Extended Absence. Prior to reinstating to active duty status an employee who is reinstated pursuant to Section 29.7 or is returning from a leave of absence, layoff or disciplinary action that lasted six months or more, the Employer shall conduct a background check on the employee. In determining whether the employee has passed the background check, the Employer shall use the same standards as are used to determine whether to disqualify a new hire. The employee shall cooperate by providing to the background investigator(s) such information as is reasonably related to evaluating the employee's fitness for duty. The Employer shall complete the background check as soon as is possible after the employee has provided written verification that the reason for his/her absence has expired or terminated and that he/she/she is available to report for duty. Except in cases of reinstatement pursuant to Section 29.7, if the background check is not completed within 14 days after the employee has provided such written verification of availability, the Employer shall place the employee in paid status (even if the employee is not cleared to return to active duty) effective as of the 15th day after such notice is received; unless the Employer was unable to complete the background check solely because of the employee's failure to cooperate with the investigator(s). Notwithstanding the foregoing, where reinstatement occurs as a result of a grievance or other appeal of disciplinary action, the employee shall be returned to paid status as of the effective date of such award or order. Upon determining that the employee has passed the background check, the Employer shall reinstate the employee to active duty status.

ARTICLE 16
ADMINISTRATIVE LEAVE

Section 16.1 – Placement on Administrative Leave.

Subd. (a) ***Critical Incident – Involved Officers.*** Involved Officers, as defined below, shall be placed on a mandatory paid administrative leave for a minimum of three calendar days. The duration of the leave shall be as specified in 16.2.

Subd. (b) ***Critical Incident – Witness Officers.*** A Witness Officer, as defined below, may request to be placed on paid administrative leave for up to three calendar days following the Critical Incident. The decision to grant the request shall be made at the sole discretion of the Chief or his/her designee. The duration of the administrative leave for a Witness Officer shall be as specified in Section 16.2.

Subd. (c) ***Pending Investigation of Allegations of Misconduct.*** The Chief or his/her designee, at his/her sole discretion, may place an employee on a paid administrative leave of absence pending the investigation of allegations against the employee which, if true, would likely result in the termination of the employee's employment.

Subd. (d) ***Work Day Defined for Leave Resulting From a Critical Incident.*** Each day of the initial period (up to seven days for an Involved Officer and up to three days for a Witness Officer) of administrative leave shall be considered a fully paid regularly scheduled "work day." The officer's schedule may be adjusted in order to avoid, to the extent possible, the administrative leave from creating an overtime obligation for excess hours in a payroll period. If the leave is extended beyond seven days (three days for a Witness Officer), the period of the additional paid leave shall be scheduled such that the officer receives his/her regular pay, but no overtime pay.

Section 16.2 – Duration of Leave.

Subd. (a) ***Critical Incident.*** The duration of administrative leave for an Involved Officer shall be not less than three calendar days. The leave may extend to a maximum of seven calendar days following the critical incident at the discretion of the Chief or his/her designee. The leave may be extended beyond seven days if requested by the Involved Officer and approved by the Chief or his/her designee. The duration of administrative leave for a Witness Officer shall not exceed three calendar days. The leave may be extended beyond three days if requested by the Witness Officer and

approved by the Chief or his/her designee. The foregoing limitations on the maximum duration of administrative leave shall not apply when:

(1) the officer is unfit for duty as determined pursuant to Article 24; or

(2) there is sufficient reliable evidence to support a preliminary conclusion that the officer may have engaged in conduct relating to the incident which, if true, would constitute a terminable offense. In such case, following the expiration of the seven calendar days, the administrative leave shall be considered to be a leave pending investigation.

Subd. (b) ***Pending Investigation.*** The duration of the administrative leave shall be at the discretion of the Chief or his/her designee, except that the administrative leave shall not exceed thirty calendar days without the mutual agreement of the Federation. Notwithstanding the foregoing, there is no time limit on the duration of administrative leave resulting from allegations of off-duty criminal conduct not related to the employee's status as a police officer.

Section 16.3 – Off-Duty Employment and Buy Back While on Administrative Leave. An officer shall not work a uniformed off-duty job or Buy Back while on Administrative Leave under this Article. An officer may work an approved non-uniform, non law-enforcement off-duty job while on a "pending investigation" administrative leave at the sole discretion of the Chief or his/her designee.

Section 16.4 – Return to Work Following Administrative Leave.

Subd. (a) ***Critical Incidents.*** Upon the conclusion of the administrative leave, a precinct employee on leave from a bid assignment shall return to his/her bid assignment in his/her precinct and shift and to the normal duties relating thereto, subject to the customary supervisory discretion with regard to assignment matters. Upon the conclusion of the administrative leave, a non-precinct employee or a precinct employee on leave from a non-bid assignment shall return to his/her previous work location and work schedule.

Subd. (b) ***Pending Investigation.*** Upon the termination or expiration of administrative leave and any resulting disciplinary suspension, the officer shall return to work as follows:

(1) *No Discipline or Minor Discipline; Bid Assignment.* When no discipline is imposed or the resulting disciplinary action is not higher than Level B, a bid-assignment employee shall be returned to his/her

bid assignment and to the duties relating thereto, subject to the normal supervisory discretion with regard to assignment matters..

(2) *Non-Bid Assignments or More Severe Discipline.* When the employee was in a non-bid assignment or when a bid-assignment employee receives discipline at Level C or D, the employee may be assigned to any appropriate assignment and duties commensurate with his/her rank.

Subd. (c) ***Off-Duty Employment; Buy Back.*** Upon the termination or expiration of administrative leave and any resulting disciplinary suspension, the employee may return to any approved off-duty employment and may work Buy Back assignments.

Section 16.5 – Expedited Arbitration. Disputes arising from alleged violations of Sections 16.1 through 16.4 shall be subject to the Expedited Arbitration provisions of Article 5 of this Agreement at the request of the Federation notwithstanding the "mutual agreement" provisions in Article 5.

Section 16.6 – Special Provisions Regarding Critical Incidents.

Subd. (a) ***Definitions.*** The following terms as used herein shall have the following meanings:

(1) *Critical incident.* An incident involving any of the following situations occurring in the line of duty:

(a) the use of Deadly Force, as defined by Minn. Stat. §609.066, by or against a Minneapolis Police Officer; or

(b) a situation in which a person who is in the custody or control of an officer dies or sustains substantial bodily harm.

(2) *Compelled Statement.* A statement or written description of events that is required to be given pursuant to the Minneapolis Police Department ("MPD") Policy and Procedure Manual or the lawful order of a supervisor and for which the person so obligated is subject to discipline if the statement or description is not given.

(3) *Witness officer.* An officer who witnesses a critical incident but who apparently did not engage in any conduct constituting a critical incident.

(4) *Involved officer.* An officer who appears to have engaged in conduct constituting a critical incident.

(5) *Police Report.* For the purpose of this Section, a statement in the form of a CAPRS report or a Q & A interview statement as determined by the Chief or his/her designee.

Subd. (b) ***Communications With and Among Officers Following A Critical Incident.*** Neither Witness Officers nor Involved Officers shall voluntarily talk to or be asked to voluntarily talk to anyone about the incident, except to:

(1) provide details to enable the primary responders or investigators to secure the scene;

(2) facilitate the commencement of the investigation;

(3) apprehend suspects;

(4) allow for officer or civilian safety at the scene; or

(5) consult with legal counsel.

Subd. (c) ***Initial Consultation With Legal Counsel.*** Witness Officers and Involved Officers shall be allowed a reasonable opportunity to consult with legal counsel before being asked to give a voluntary statement to an MPD Supervisor or an investigator. Immediately after consultation with legal counsel, the legal counsel will inform the ranking investigator or designee if the officer is willing to give a voluntary statement. If the Officer requests, he/she shall be allowed to consult with legal counsel before giving a compelled statement.

The provisions of this subdivision shall not apply to the information described under subdivision (b) of this section.

Subd. (d) ***Statements and Reports.***

1. *Voluntary Statements to Investigators.* Voluntary statements to investigators, whether written or oral, may be made at the discretion of the Officer.

2. *Police Reports.* Regardless of whether the officer gives a voluntary statement to investigators, each Witness Officer shall complete a Police Report as soon as practical following the critical incident, unless relieved of the obligation to do so by the ranking investigator, the Chief or his/her designee. Regardless of whether the officer gives a voluntary statement to investigators, each Involved Officer shall complete a Police Report as soon as practical, but in all instances, prior to the expiration of administrative leave, unless relieved of the obligation to do so by the ranking investigator, the Chief or his/her designee. An employee may be

required to give both a CAPRS and a Q & A Statement when it is determined that a Q & A Statement is required, if feasible, the lead investigator will advise the Federation Representative before advising the employee. If a Q & A Statement is to be given before the employee is relieved from duty for his/her work shift, the Q & A Statement shall be taken within a reasonable time.

Subd. (e) ***Firearms and Equipment.*** Both Witness and Involved Officers shall make themselves available for a firearms inspection. If investigators request, an officer shall surrender his/her firearm and any other requested equipment. An officer who surrenders his/her firearm or equipment and who requests a replacement for items surrendered, shall be provided by the Department with a replacement firearm and/or equipment as soon as reasonably possible. Unless a supervisor has a reason to believe that the officer poses a threat to himself/herself or to others or unless directed by the ranking investigator, firearms should not be taken from officers at the scene of the Critical Incident.

Subd. (f) ***Psychological Debriefing.*** Witness Officers shall be encouraged and allowed to meet with the Mental Health Professional, as defined in the Critical Incident Policy (Section 7-810.01 of the MPD Policy and Procedure Manual as of 10/27/04), selected by the officer from the approved list. Involved Officers shall be required to meet with the Mental Health Professional selected by the officer from the approved list. Such meeting or meetings shall be considered on-duty time, and the City shall pay the fees of the Mental Health Professional pursuant to Article 24, Section 24.6 of the Collective Bargaining Agreement. If, after consultation, the Mental Health Professional renders an opinion that the officer is not yet fit for duty, the officer shall be placed on Injured on Duty ("IOD") Status, pursuant to Minneapolis Civil Service Rule 15.19(A). If the Mental Health Professional determines that the officer is not able to return to work in any capacity after the officer has exhausted IOD benefits, he/she may continue to be eligible for paid time off pursuant to applicable provisions of the Labor Agreement, other Civil Service Rules or State Law. Any disputes concerning the Officer's fitness for duty shall be resolved in accordance with Article 24, Section 24.8, of the Collective Bargaining Agreement.

Subd. (g) ***Continuing Consultation with Legal Counsel; Cooperation with City Attorney.*** Witness and Involved Officers are entitled to consult with their legal counsel during the pendency of the critical incident investigation, up to and including any grand jury proceedings. Such reasonable and necessary meeting or meetings shall be considered on-duty time and the fees of the legal counsel may be eligible to be paid by the City pursuant to Minn. Stat. §466.76 and the City's legal fees policy. Officers shall be personally responsible for payment of any legal fees which exceed the

hourly rate provided for in the City's legal fees policy. Both Witness and Involved Officers are required to meet with and otherwise cooperate with the Civil Division of the City Attorney's Office as requested with regard to the investigation and subsequent defense of any civil litigation that may arise from a Critical Incident.

ARTICLE 17
SICK LEAVE

Section 17.1 - Sick Leave. Permanent employees who regularly work twenty (20) or more hours per week shall be entitled to leaves of absence with pay, for actual, bona fide illness, temporary physical disability, or illness in the immediate family, or quarantine. Such leaves shall be granted in accordance with the provisions of this article.

Section 17.2 - Definitions. The term *illness*, where it occurs in this article, shall include bodily disease or injury or mental affliction, whether or not a precise diagnosis is available, when such disease or affliction is, in fact, disabling. Other factors defining sick leave are as follows:

(a) Ocular and Dental. Necessary ocular and dental care of the employee shall be recognized as a proper cause for granting sick leave.

(b) Chemical Dependency. Alcoholism and drug addiction shall be recognized as an illness. However, sick leave pay for treatment of such illness shall be contingent upon two conditions: 1) the employee must undergo a prescribed period of hospitalization or institutionalization, and 2) the employee, during or following the above care, must participate in a planned program of treatment and rehabilitation approved by the Employer in consultation with the Employer's health care provider.

(c) Chiropractic and Podiatristic Care. Absences during which ailments were treated by chiropractors or podiatrists shall constitute sick leave.

(d) Illness or Injury in the Immediate Family. Employees may utilize accumulated sick leave benefits for reasonable periods of time when their absence from work is made necessary by the illness or injury of their dependent child, their spouse, *registered domestic partner* within the meaning of Minneapolis *Code or Ordinances* Chapter 142, parents, dependents other than their children and/or members of their household. The utilization of sick leave benefits under the provisions of this Paragraph shall be administered under the same terms as if such benefits were utilized in connection with the employee's own illness or injury. Additional time off without pay, or vacation, if available and requested in advance, shall be granted as may reasonably be required under individual demonstrated circumstances. Nothing in this subdivision limits the rights of

employees under the provisions of Paragraph 15.2(d) (*Family and Medical Leaves*) of this Agreement.

Section 17.3 - Eligibility, Accrual and Calculation of Sick Leave. If permanent employees who regularly work more than twenty (20) hours per week, are absent due to illness, such absences shall be charged against their accumulated accrual of sick leave. Sick leave pay benefits shall be accrued by eligible employees at the rate of ninety-six (96) hours per calendar year worked and shall be calculated on a direct proportion basis for all hours of credited work time other than overtime.

Section 17.4 - Sick Leave *Bank* - Accrual. All earned sick leave shall be credited to the employee's sick leave *bank* for use as needed. Ninety-six (96) hours of medically unverified sick leave may be allowed each calendar year. However, the Employer may require medical verification in cases of suspected fraudulent sick leave claims, including where the employee's use of sick leave appears systematic or patterned. Five (5) or more consecutive days of sick leave shall require an appropriate health care provider in attendance and verification of such attendance. The term *in attendance* shall include telephonically-prescribed courses of treatment by a physician which are confirmed by a prescription or a written statement issued by the physician.

Section 17.5 - Interrupted Sick Leave. Permanent employees with six (6) months of continuous service who have been certified or recertified to a permanent position shall, after layoff or disability retirement, be granted sick leave accruals consistent with the provisions of this article. Employees returning from military leave shall be entitled to sick leave accruals as provided by applicable Minnesota statutes.

Section 17.6 - Sick Leave Termination. No sick leave shall be granted an employee who is not on the active payroll or who is not available for scheduled work. Layoff of an employee on sick leave shall terminate the employee's sick leave.

Section 17.7 - Employees on Suspension. Employees who have been suspended for disciplinary purposes shall not be granted sick leave accruals or benefits for such period(s) of suspension.

Section 17.8 - Employees on Leave of Absence Without Pay. An employee who has been granted a leave of absence without pay, except a military or budgetary leave, shall not be granted sick leave accruals or benefits for such periods of leave of absence without pay.

Section 17.9 - Workers' Compensation and Sick Leave. Employees shall have the option of using available sick leave accruals, vacation accruals, compensatory time accruals or of receiving workers' compensation (if qualified under the provisions of the *Minnesota Workers' Compensation Statute*) where sickness or injury was incurred in the line of duty. If sick leave, vacation or compensatory time is used, payments of full salary shall include the workers' compensation to which the employees are entitled under the applicable statute, and the employees shall receipt for such compensation payments. If sick leave, vacation or

compensatory time is used, the employees' sick leave, vacation or compensatory time credits shall be charged only for the number of days represented by the amount paid to them in excess of the workers' compensation payments to which they are entitled under the applicable statute. If an employee is required to reimburse the Employer for the compensation payments thus received, by reason of the employee's settlement with a third party, his/her sick leave, vacation or compensatory time will be reinstated for the number of days which the reimbursement equals in terms of salary. In calculating the number of days, periods of one-half (½) day or more shall be considered as one (1) day and periods of less than one-half (½) day shall be disregarded.

Section 17.10 - Notification Required. Employees shall be required to notify their immediate supervisor as soon as possible of any occurrence within the scope of this article which prevents work. If the Employer has provided pre-work shift contact arrangements, employees shall be required to provide such notification no later than one (1) hour before the start of the work shift. If no such arrangements have been made, employees shall be required to provide such notification as soon as possible but in no event later than one-half (½) hour after the start of the shift.

ARTICLE 18
SICK LEAVE CREDIT PAY AND SEVERANCE PAY

Section 18.1 - Sick Leave Credit Pay Plan. An employee who satisfies the eligibility requirements of this Section, shall be entitled to make an election to receive payment for sick leave accrued but unused under the terms and conditions set forth below.

(a) Eligibility. An employee who has an accumulation of sick leave of four hundred eighty (480) hours or more on December 1 of each year (hereafter an "Eligible Employee") shall be eligible to make the election described below.

(b) Election. On or before December 10 of each year, the Employer shall provide to each Eligible Employee a written election form on which the Eligible Employee may elect: whether he/she wants to receive cash payment for all or any portion of his/her sick leave that is accrued but is unused during the calendar year immediately following the election (the "Accrual Year"); and, if payment is to be made, the method of payment (regular or optional) as described below. The employee shall deliver the election form to the Employer on or before December 31. Such election is irrevocable. Therefore, once an Eligible Employee transmits his/her election form to the Employer, the employee may not revoke the decision to receive cash payment for sick leave or change the method of payment or the amount of sick leave for which payment is to be made. If an Eligible Employee does not transmit an election form to the employer on or before December 31, he/she shall be

considered to have directed the Employer to NOT make a cash payment for sick leave accrued during the Accrual Year. If an Eligible Employee elects to receive payment, but does not specifically elect the optional method, the optional method shall NOT be used.

(c) Payment. Within sixty (60) days after the end of the Accrual Year, an Eligible Employee who has elected to receive cash payment shall be paid as follows:

i. *At Least Four Hundred Eighty (480) Hours, But Less Than Seven Hundred Twenty (720) Hours.* With regard to an Eligible Employee who, as of December 31 of the Accrual Year, has accumulated at least four hundred eighty (480) hours but less than seven hundred twenty (720) hours of sick leave, payment shall be made for the lesser of: the number of hours indicated by the employee on his/her election form; or the number of unused sick leave hours earned during the Accrual Year in excess of four hundred eighty (480) hours. The amount of the payment shall be based on fifty percent (50%) of the employee's regular hourly rate of pay in effect on December 31 of the Accrual Year.

ii. *At Least Seven Hundred Twenty (720) Hours, But Less Than Nine Hundred Sixty (960) Hours.* With regard to an Eligible Employee who, as of December 31 of the Accrual Year, has accumulated at least seven hundred twenty (720) hours but less than nine hundred sixty (960) hours of sick leave, payment shall be made for the lesser of: the number of hours indicated by the employee on his/her election form; or the number of unused sick leave hours earned during the Accrual Year in excess of seven hundred twenty (720) hours. The amount of the payment shall be based on seventy-five percent (75%) of the employee's regular hourly rate of pay in effect on December 31 of the Accrual Year.

iii. *At Least Nine Hundred Sixty (960) Hours.* With regard to an Eligible Employee who, as of December 31 of the Accrual Year, has accumulated at least nine hundred sixty (960) hours of sick leave, payment shall be made for the lesser of: the number of hours indicated by the employee on his/her election form; or the number of unused sick leave hours earned during the Accrual Year in excess of

nine hundred sixty (960) hours. The amount of the payment shall be based on one hundred percent (100%) of the employee's regular hourly rate of pay in effect on December 31 of the Accrual Year.

iv. *Optional Payment Method.* Payment shall be made for the lesser of: the number of hours indicated by the employee on his/her election form or the number of unused sick leave hours earned during the Accrual Year, with regard to an Eligible Employee who:

1. has elected to receive payment under the optional method; and

2. as of December 31 of the Accrual Year, has accumulated at least seven hundred twenty (720) hours of sick leave but has not accumulated enough aggregate hours to receive payment for all of the hours he/she accrued during the Accrual Year at the rate specified in subparagraph ii. or iii., above.

The amount of the payment under the Optional Method shall be based on the percentage of the employee's regular hourly rate that would apply to *all* of the hours for which the employee is to be paid (namely, the next lower rate than that for which the employee was otherwise qualified).

(d) Adjustment of Sick Leave Bank. The number of hours for which payment is made shall be deducted from the Eligible Employee's sick leave bank at the time payment is made.

(e) Deferred Compensation. Employees, at their sole option, may authorize and direct the Employer to deposit sick leave credit pay under paragraph (c) to a deferred compensation plan administered by the Employer provided such option is exercised at the same annual time as regular changes in deferred compensation payroll deductions are normally permitted.

Section 18.2 Accrued Sick Leave Benefit Pay Plan. Employees who retire from positions in the qualified service and who meet the requirements set forth in this article shall be paid in the manner and amount set forth herein.

(a) Payment for accrued but unused sick leave shall be made only to employees who:

i. have separated from service; and

ii. as of the date of separation had accrued sick leave credit of no less than four hundred eighty (480) hours; and

iii. as of the date of separation had:

1. no less than twenty (20) years of qualified service as computed for retirement purposes, or

2. who have reached sixty years of age, or

3. who are required to retire early because of either disability or having reached mandatory retirement age.

(b) When an employee having no less than four hundred eighty (480) hours accrued sick leave dies prior to retirement, he/she/she shall be deemed to have retired because of disability at the time of death, and payment for his/her accrued sick leave shall be paid to the designated beneficiary as provided in this Section.

(c) The amount payable to each employee qualified hereunder shall be one-half (½) the daily rate of pay for the position held by the employee on the day of retirement, notwithstanding subsequent retroactive pay increases, for each day of accrued sick leave subject to a minimum of four hundred eighty (480) hours and a maximum of one thousand nine hundred twenty (1920) hours.

(d) Such severance pay shall be paid in a lump sum following separation from employment but not more than sixty (60) days after the date of the employee's separation.

(e) Effective April 6, 2003 and thereafter, 100% of the amount payable under this Section shall be deposited into the Health Care Savings Account (MSRS). This deposit shall occur within thirty (30) days of the date of retirement.

(f) If an employee entitled to payment under this Section dies prior to receiving the full amount of such benefit, the remaining payments shall be made to the beneficiary entitled to the proceeds of his or her Minneapolis group life insurance policy or to the employee's estate if no beneficiary is listed.

ARTICLE 19
INSURANCE BENEFITS

Section 19.1 - Group Health Insurance.

Subd. (a) ***Enrollment and Eligibility***. Upon proper application, permanently certified full-time employees shall be enrolled as a covered participant in one of the City's available indemnity insurance plans or one of the available Health Maintenance Organization plans and shall be provided with the coverages specified therein. Coverage under the selected plan shall become effective no later than the first day of the calendar month immediately following the completion of thirty (30) days of employment. Eligible employees may waive coverage under the Employer's available indemnity insurance plans and its available HMO plans by providing written evidence satisfactory to the Employer that they are covered by health insurance or have HMO coverage from another source at the time of open enrollment and sign a waiver of coverage under the Employer's available plans. Subsequent coverage eligibility for such employees, if desired, shall be governed by the provisions of the contracts of insurance and/or HMO contracts between the Employer and the providers of such coverage.

Subd. (b) ***Employer and Employee Contributions – Health Insurance***. Contributions toward the cost of premiums for health insurance shall be governed by the Letter of Agreement, which is attached to this Collective Bargaining Agreement and hereby incorporated by reference as "Attachment "D".

Subd. (c). ***Participation in Negotiating Health Care Costs***. The Minneapolis Board of Business Agents shall be entitled to select up to five representatives to participate with the Employer in negotiating with Health Care Benefit Plan providers regarding the terms and conditions of coverage that are consistent with the benefits conferred under the collective bargaining agreements between the Employer and the certified exclusive representatives of its employees.

Section 19.2 - Group Life Insurance. Permanently certified full-time employees shall be enrolled in the Employer's group term life insurance policy and shall be provided with the coverages specified therein in the face amount of ten thousand dollars ($10,000.00). Coverages shall become effective no later than the first day of the calendar month immediately following the completion of 30 days of employment. The Employer shall pay the required premiums for the above amounts and the City shall continue to provide arrangements for employees to purchase additional amounts of life insurance.

Section 19.3 - Group Dental Insurance. Permanently certified full-time employees shall be enrolled, along with their eligible dependents in the City's group dental insurance policy and shall be provided with the coverage specified therein. Coverage shall become effective no later than the first day of the calendar month immediately following the completion of thirty (30) days of employment. The City shall pay the required premiums for the policy on a single/family *composite* basis.

Section 19.4 - MinneFlex. Employees who have established enrollment eligibility under the provisions of Paragraph 18.1(a), (*Enrollment and Eligibility*) of this article, shall be provided an opportunity to participate in the City's *MinneFlex* Plan - a qualified plan which provides special tax advantages to employees under *IRS Code* Section 125. The *Plan Document* shall control all questions of eligibility, enrollment, claims and benefits.

ARTICLE 20
UNION COMMUNICATION

The City shall provide reasonable bulletin board space at precincts, divisions and remote locations for use by the Federation in posting notices of Federation business and activities. The Federation may communicate with its members regarding Federation business and activities via reasonable use of the City's email system. The Federation shall work with the City to minimize the disruption to the City's information technology systems that may be caused by such email communications. The parties agree that the purpose of providing the Federation with bulletin board space and access to the email system is to foster effective communication relating to union business and is not to serve as a soap box to air complaints, offer political commentary or exchange personal messages among co-workers. Therefore, such union communications shall not contain anything that is political, offensive, obscene or that otherwise violates the City's Employee Policy on Electronic Communication.

ARTICLE 21
EXAMINATION TIME

When an employee is scheduled to take a Minneapolis Civil Service promotional examination during his or her regular scheduled hours of duty, the City shall grant reasonable time off to take the examination except in emergencies as declared by the Chief of Police and the Mayor of Minneapolis. If such an emergency occurs, the City shall request the Civil Service Commission to reschedule the examination.

ARTICLE 22
RULES AND REGULATIONS

It is understood that the City, through its various Departments, has the right to establish reasonable work rules and regulations. The City agrees to enter into discussion with the Federation on additions to or changes in the existing rules and regulations prior to their implementation. The City further agrees that changes shall be effective three (3) calendar days after posting.

ARTICLE 23
PHYSICAL FITNESS PROGRAM

Section 23.1 Fitness Testing.

Subd. (a) ***Purpose***. The purpose of the fitness testing program is to improve the level of physical fitness for the Department by establishing fitness goals for all sworn personnel and a system of assistance and incentives to encourage everyone to attain these goals.

Subd. (b) ***Definitions***.

(1) Test - shall mean the entire testing protocol consisting of all of the five elements described in Paragraph (d), below.

(2) Component - shall mean any one of the five elements of the test described in Paragraph (c), below.

(3) Test Score - shall mean the cumulative numerical measure of performance on all components.

(4) Component Score - shall mean the numerical measure of performance on any component.

(5) Attempt - the act of taking the test or any component, as mandated pursuant to this agreement.

Subd. (c) ***Test Components***. The physical fitness test shall consist of the following components:

(1) Option of Bench Press or pushups to measure upper body strength;

(2) Option of Leg Press or vertical jump to measure lower body strength;

(3) Sit-ups to measure trunk muscular fitness;

(4) Option of GXT Test or 1.5 mile run to measure aerobic power; and

(5) 300 meter run to measure anaerobic power.

The employee may satisfy the aerobic power component by satisfactorily performing either a GXT Test or 1.5 mile run. The employee at his/her sole discretion may select either the GXT Test or the 1.5 mile run. If the employee selects the GXT Test, he/she/she must agree in writing that the test administrator may disclose a numerical test score to the MPD. If an employee selects to do the run, he/she/she still is entitled to take one GXT Test per year for his/her own personal benefit and the results of such GXT Test need not be disclosed to the MPD.

The employee may satisfy the upper body strength component by attaining the standards for either the flat weight or percentage of body weight as measured by the bench press or performing the requisite number of push-ups. The employee may satisfy the lower body strength component by attaining the standards for either the flat weight as measured by the leg press or performing the required vertical jump. The employee must select either the bench press or push-ups and the leg press or vertical jump prior to taking the test.

Subd. (d) ***Fitness Goals***. The fitness goals have been determined and validated as appropriate job-related measures by a consultant with recognized expertise in establishing fitness standards for law enforcement officers. The fitness goals for each component of the test shall be the same as the requirements for successful completion of the academy, but shall not be more stringent than the following:

COMPONENT	GOAL
Upper Body Strength	Bench Press – 150 Pounds; or Bench Press – 82% of body weight; or Push-ups – 28
Lower Body Strength	Leg Press – 356 Pounds; or Vertical Jump – 16 inches
Sit-ups	35
300 Meter Run	69 Seconds
GXT Test (VO2)	35
1.5 Mile Run	14:43 (minutes:seconds)

Subd. (e) ***Frequency of Testing***. An employee may be required to take the test once per calendar year upon 90 days advance notice. If the employee takes the test, but does not meet each of the Goals, he/she, at the employee's option, may retest at any time the test is given by the Department during the year. However, an employee may not retest on more than two components within less than 60 days of a prior attempt. An employee who elects to retest and who has attained the Goal on at least three of the Components within 90 days of the retest shall be considered to have attained each of the Goals by retesting only those Components for which he/she did not initially meet the Goal. An employee who elects to retest and who must take the cardiovascular Component, may opt to take the GXT Test at City expense only twice per year (this limitation includes the initial Test).

Subd. (f) ***Testing Mandatory; Excused Absences.***

(1) Physical fitness testing shall be mandatory for all sworn personnel.

(2) Subject to the terms of this Paragraph, an employee may seek to be excused from testing. Justifiable reasons for not taking the Test in any given month shall include, but are not limited to, situations in which the employee is:

(A) physically or medically unable to perform;

(B) on a leave of absence (whether paid or unpaid) or pre-approved vacation; or

(C) assigned to a work detail which causes the employee to be unable to take the Test.

(3) An employee seeking to be excused from testing must notify his/her commander in writing prior to the scheduled testing session of such request and the reason for the request. The commander shall have the discretion to grant requests for reasons (B) and (C) above. The commander shall also have discretion to grant requests for short-term, minor physical conditions subject to the restrictions set forth below. If the commander determines that the employee should be excused, he/she shall notify the testing administrator in writing (with a copy to the employee). The notice shall also specify the employee's new test date. When so excused by his/her commander, the employee is not required to report for testing.

(4) If the employee's request to be excused because of a physical or medical condition is refused by his/her commander, the commander shall refer the employee to the City's health care professional who shall make the determination as to whether the employee is able to take the test.

(5) The City's health care professional may excuse the employee from testing if the professional determines that the employee is suffering from a condition which prevents the employee from performing the test safely or to the best of his/her ability. The employee shall be tested as soon as is practical after the City's health care professional has certified that the employee is able to perform the Test safely and to the best of his/her ability. When evaluating an employee's ability to take the test, the City's health care professional may simultaneously evaluate the employee to determine his/her physical fitness for duty.

Subd. (g) ***Failure to Take Test.*** Failure to take the Test, except when excused pursuant to the provisions of Subd. (f), shall be considered insubordination. The first such offense shall be considered a Category B violation under the Department's disciplinary guidelines, however, the maximum disciplinary sanction for a first violation shall be a letter of reprimand. The principles of progressive discipline shall apply to subsequent violations. In addition to any discipline imposed, a new test date shall be assigned to the employee.

Subd. (h) ***Testing Incentive***. An employee who takes the test as required or is excused from testing by the Employer shall receive the following:

(1) The Employee shall be eligible to retain his/her health club membership without regard to usage.

(2) The employee shall be eligible for reimbursement for the cost of a single membership at the club of his/her choice pursuant to the terms of Paragraph 22.2 (h), below.

(3) These benefits shall become effective twice per calendar year on the following two "Entry Dates": on the first day of the first payroll period after July 1 for persons who take the test in January through June; and on the first day of the first payroll period after January 1 for persons who take the test in July through December. Once earned, an employee's eligibility to receive these benefits shall continue until the Entry Date following the person's next test date.

Subd. (i) ***Fitness Improvement Assistance***. The Department will make a variety of resources available to employees who seek assistance in improving and maintaining their level of fitness. These resources will include written materials on exercise, diet, smoking cessation and other relevant health and wellness issues; educational programming; and personal consultations to evaluate an employee's needs and to recommend an appropriate program for improvement. The Department and Federation will continue to review other ideas to improve fitness such as a mentoring program, individual or team competitions or other assistance/motivational programs.

Subd. (j) ***Fitness Level as Factor in Performance***. Effective for Tests administered after January 1, 2001, an employee's performance on the Test relative to the Goals will be considered as a factor in the evaluation of the employee's overall job performance.

Subd. (k) ***Suspension of Testing.*** Notwithstanding any provisions of this Section 22.1 to the contrary; the Department, at its sole discretion, may postpone for a period of up to three months or suspend for more than three months or for an indefinite period the administration of the annual fitness test. If the Department exercises its right to postpone testing, the employees for whom testing was postponed shall be tested at the next available opportunity upon the resumption of testing. If the Department exercises its right to suspend testing, it shall notify the Federation in writing not less than one month prior to the month in which testing is to be

suspended. Such suspension of testing shall remain in effect until the Department notifies the Federation in writing that testing shall be resumed. Such notice of the resumption of testing shall be given not less than 90 days prior to the resumption of testing. If testing is suspended during any portion of a calendar year, *all* employees shall be treated during such calendar as though they had taken the test . The foregoing shall apply to: employees who did not take the test; and any employees who took the test at any time during the calendar year, whether prior to the suspension of testing or after the resumption of testing, without regard to whether he/she achieved the Goal for each Component.

Section 23.2 - Health Club Memberships and GXT Test.

Subd. (a) ***Eligibility***. All police officers of the City are eligible for a single membership at the facility selected pursuant to the terms of this Agreement (the "Primary Facility") and an annual voluntary GXT Test or other preventative medical test mutually agreed upon by the parties (the "Annual Test"). The club membership dues and the cost of the Annual Test for all eligible employees shall be paid by the City. Because the Annual Test is voluntary, the results shall not be provided to the employer by the test administrator. Therefore, any follow-up medical treatment resulting from the Annual Test shall be at the discretion and the expense of the employee. Nothing herein shall limit or affect any rights or benefits under Workers' Compensation statutes, disability benefit statutes or other applicable laws.

Subd. (b) ***Club Usage***. Employees who do not use the Primary Facility or an Alternate Facility may request that the City cancel their health club membership. An employee who requests cancellation of his/her membership shall be entitled to a one time payment of $100. Such payment shall be made within thirty (30) days after the effective date of the cancellation of the membership.

Subd. (c) ***Reinstatement*** After an employee's membership to the Primary Facility or to an Alternate Facility has been cancelled pursuant to Paragraph (b), above, he/she may be reinstated by requesting reinstatement in writing on a form to be supplied by the Department and, for employees who received the cancellation stipend referenced in subd. (b), by reimbursement of the $100 cancellation stipend. Reimbursement shall be effective upon the next Entry Date as referenced in Section 22.1, Subd. (h)(3).

Subd. (d) ***Membership Upgrades***. Any employee who is eligible for a single membership may upgrade his/her membership to a family membership (or other type of upgraded membership) at the employee's option. The employee shall bear the additional cost of any such upgrade.

Subd. (e) ***New Hires***. Newly hired officers shall become eligible for membership upon completion of their training.

Subd. (f) ***Retirement***. Officers who separate from service with the Police Department during a calendar year by reason of retirement shall continue to be eligible for membership for the remainder of the calendar year.

Subd. (g) ***Selection of Primary Facility***. The Primary Facility shall be one that is mutually agreeable to the City and the Federation. In order to control its costs, the City may solicit bids or proposals from potential providers of the Primary Facility upon first obtaining the Federation's approval as to the specifications of the solicitation for bids or the request for proposals, however, the selection of the successful bid/proposal shall be made jointly by the City and the Federation.

Subd. (h) ***Alternate Facilities***. An employee who takes the test or is excused from taking the test by the Employer during any calendar year shall be eligible for reimbursement for the membership dues to an alternate health club pursuant to the terms of this Paragraph. The City and Federation shall, by mutual agreement, establish and maintain a list of participating health club facilities (the "Approved List"). An eligible employee may elect to opt out of the membership to the Primary Facility and instead maintain a membership at any facility on the Approved List (the "Alternate Facility"). Such an election shall become effective on the next Entry Date after the election and continue in effect until the next Effective Date after the employee revokes such election or ceases to be eligible for the benefit. All elections and revocations may be made only once per year, must be made in writing and must be delivered to the Department not less than one month before the applicable Effective Date (or as soon thereafter as practical for employees who become eligible in June or December). An eligible employee who elects to maintain a membership at an Alternate Facility shall be entitled to reimbursement from City in an amount up to the annual cost of a single membership to his/her choice of Alternate Facility. The reimbursement shall be funded as follows: solely by the City to the extent of the amount paid by the City per employee for a single membership to the Primary Facility; and the balance, if any, from any Sick Leave Credit Pay designated by the Employee pursuant to Section 17.1.

Subd. (i) ***No Workouts During Working Hours***. No employee may work out while on duty, except as authorized by the Chief or his/her designee(s).

ARTICLE 24
DRUG AND ALCOHOL TESTING

Abuse of drugs and alcohol is a nationwide problem. It affects persons of every age, race, sex and ethnic group. It poses risks to the health and safety of employees of the City of Minneapolis and to the public. To reduce those risks, the City and the Unions who represent City employees, have jointly, by collective bargaining, adopted this policy concerning drugs and alcohol in the workplace. This policy establishes standards concerning drugs and alcohol which all employees must meet and it establishes a testing procedure to ensure that those standards are met.

This drug and alcohol testing policy is intended to conform to the provisions of the Minnesota *Drug and Alcohol Testing in the Workplace Act* (*Minnesota Statutes* §181.950 to 181.957), as well as the requirements of the federal *Drug-Free Workplace Act of 1988* (*Public Law* 100-690, Title V, Subtitle D) and related federal regulations. Nothing in this policy shall be construed as a

limitation upon the Employer's obligation to comply with the provisions of the Omnibus Transportation Employee Testing Act of 1991.

Section 24.1 - Definitions.

(a). ***Confirmatory Test*** and ***Confirmatory Retest*** mean a drug or alcohol test that uses a method of analysis allowed by the Minnesota *Drug and Alcohol Testing in the Workplace Act* to be used for such purposes.

(b) ***Drug*** means a controlled substance as defined in *Minnesota Statutes* §152.01, Subd. 4.

(c) ***Drug and Alcohol Testing***, ***Drug or Alcohol Testing***, and ***Drug or Alcohol Test*** mean analysis of a body component sample approved according to the standards established by the Minnesota *Drug and Alcohol Testing in the Workplace Act*, for the purpose of measuring the presence or absence of drugs, alcohol, or their metabolites in the sample tested.

(d) ***Drug Paraphernalia*** has the meaning defined in *Minnesota Statutes* §152.01, Subd. 18.

(e) ***Employee*** means a person, independent contractor, or person working for an independent contractor who performs services for the City of Minneapolis for compensation, in whatever form, including any employee directly engaged in the performance of work pursuant to the provisions of any federal grant or contract.

(f) ***Employer*** means the City of Minneapolis acting through a department head or any designee of the department head.

(g) ***Initial Screening Test*** means a drug or alcohol test which uses a method of analysis allowed by the Minnesota *Drug and Alcohol Testing in the Workplace Act* to be used for such purposes.

(h) ***Positive Test Result*** means a finding of the presence of alcohol, drugs or their metabolites in the sample tested in levels at or above the threshold detection levels recognized by the National Institute on Drug Abuse, the College of American Pathologists or the Department of Health, State of New York, as appropriate cutoff values or concentrations under the standards of the programs they administer. At the time this policy was published, each of the following levels was considered to be a positive test result:

Substance	Initial Screening	Confirmatory
Alcohol (urine)	.02 gm/100 ml of urine	.02 gm/100 ml of urine
Alcohol (blood)	.02 gm/100 ml of blood	.02 gm/100 ml of blood

Alcohol (breath)	.02 gm/210 L of breath	.02 gm/100 ml of blood
Amphetamines	1,000 ng/ml	500 ng/ml*
Methamphetamine	1,000 ng/ml	500 ng/ml*
Barbiturates	300 ng/ml	300 ng/ml
Benzodiazepines	300 ng/ml	300 ng/ml
Cocaine Metabolites	300 ng/ml	150 ng/ml
Fentanyl	5 ng/ml	5 ng/ml
Opiate Metabolites	2000 ng/ml	
Opiates: 1) Morphine		2000 ng/ml*
Opiates: 2) Codeine		2000 ng/ml*
PCP (Phencyclidine)	25 ng/ml	25 ng/ml
Marijuana Metabolites	20 ng/ml	15 ng/ml
LSD (Lysergic Acid Diethylamide)	1 ng/ml	5 ng/ml
3, 4-Methylenedioxy Amphetamine (MDA)	300 ng/ml	300 ng/ml

* Individually or in combination.

As advances in technology or other considerations warrant identification of these substances at other concentrations, the organizations listed above may recognize different threshold detection levels than those set forth above. Such levels shall be considered to be *positive test results* under this policy. Methods of analysis used and testing levels reported by laboratories who are certified or accredited by the organizations listed above for other drugs shall also be observed under this policy.

(i) ***Gm*** means gram(s).

(j) ***L*** means liter(s).

(k) ***Ml*** means milliliter(s).

(l) ***Ng/ml*** means nanograms per milliliter.

(m) ***Reasonable Suspicion*** means a basis for forming a belief based on specific facts and rational inferences drawn from those facts.

(n) ***Under the Influence*** means having the presence of a drug or alcohol at or above the level of a positive test result.

(o) ***Valid Medical Reason*** means (1) a written prescription, or an oral prescription reduced to writing, which satisfies the requisites of *Minnesota Statutes* §152.11, and names the employee as the person for whose use it is intended; and (2) a drug prescribed, administered and dispensed in the course of professional practice by or under the direction and supervision of a licensed doctor, as described in *Minnesota Statutes* §152.12; and (3) a drug used in accord with the terms of the prescription. Use of any over-the-counter medication in accord with the terms of the product's directions for use shall also constitute a *valid medical reason*.

(p) ***Controlled Substance*** means a controlled substance in Schedules I through V of Section 202 of the Controlled Substances Act (U.S.C. 812), and as further defined by regulation at 21 CFR 1300.11 through 1300.15.

(q) ***Conviction*** means a finding of guilt (including a plea of *nolo contendere*) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of federal or state criminal drug statutes.

(r) ***Criminal Drug Statute*** means a federal or non-federal criminal statute involving the manufacture, distribution, dispensing, use or possession of any controlled substance.

(s) ***Drug-Free Workplace*** means a site for the performance of work done in connection with any federal grant or contract at which employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance.

(t) ***Federal Agency*** or ***Agency*** means any United States executive department, military department, government corporation, government controlled corporation, any other establishment in the executive branch (including the Executive Office of the President), or any independent regulatory agency.

(u) ***Grant*** means an award of financial assistance, including a cooperative agreement, in the form of money, or property in lieu of money, by a federal agency directly to a grantee. The term *grant* includes block grant and entitlement grant programs, whether or not exempted from coverage under the grants management government-wide regulation (*Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*). The term does not include technical assistance in the form of loans, loan guarantees, interest subsidies, insurance, or direct appropriations; or any Veterans' benefits to

individuals, i.e., any benefit to Veterans, their families, or survivors by virtue of the service of a Veteran in the Armed Forces of the United States.

(v) ***Grantee*** means a person who applies for or receives a grant directly from a federal agency.

(w) ***Individual*** means a natural person.

Section 24.2 - Work Rules.

(a) No employee shall be under the influence of any drug or alcohol while the employee is working or while the employee is on the Employer's premises or operating the Employer's vehicle, machinery, or equipment, except pursuant to a valid medical reason or when approved by the Employer as a proper law enforcement activity.

(b) No employee shall use, possess, sell or transfer drugs, alcohol or drug paraphernalia while the employee is working or while the employee is on the Employer's premises or operating the Employer's vehicle, machinery or equipment, except pursuant to a valid medical reason or when approved by the Employer as a property law enforcement activity.

(c) No employee, while on duty, shall engage or attempt to engage or conspire to engage in conduct which would violate any law or ordinance concerning drugs or alcohol, regardless of whether a criminal conviction results from the conduct.

(d) As a condition of employment, no employee shall engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in the Employer's workplace.

(e) As a condition of employment, every employee must notify the Employer of any criminal drug statute conviction no later than five (5) days after such conviction.

(f) Any employee who receives a criminal drug statute conviction, if not discharged from employment, must within thirty (30) days satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency.

(g) The Employer shall notify the granting agency within ten (10) days after receiving notice of a criminal drug statute conviction from an employee or otherwise receiving actual notice of such conviction.

Section 24.3 - Person Subject To Testing. All employees are subject to testing under applicable sections of this policy. However, no person will be tested for drugs or alcohol under

this policy without the person's consent. The Employer will require an individual to undergo drug or alcohol testing only under the circumstances described in this policy.

Section 24.4 - Circumstances For Drug Or Alcohol Testing. The Employer may require an employee to undergo drug and alcohol testing if the Employer or any supervisor of the employee has a reasonable suspicion related to the performance of the job that the employee:

(a) Has sustained a personal injury as that term is defined in *Minnesota Statutes* §176.011, Subd. 16, or has caused another person to die or sustain a personal injury; or

(b) Was operating or helping to operate machinery, equipment, or vehicles involved in a work-related accident resulting in property damage or personal injury.

(c) Has discharged a firearm loaded with bullets, slugs or shot other than: (1) on an established target range; (2) while conducting authorized ballistics tests; (3) while engaged in recreational hunting activities; or (4) when authorized by a supervisor to shoot a wounded or dangerous animal or to disable a light, lock or other object which presents an impediment or hazard to an officer who is carrying out his/her lawful duties.

The Employer shall not request an employee to submit a drug or alcohol test unless two (2) agents of the Employer have confirmed the existence of *reasonable suspicion,* within the meaning of this Policy, that:

(a) Is under the influence of drugs or alcohol while the employee is working or while the employee is on the Employer's premises or operating the Employer's vehicle, machinery, or equipment; or

(b) Has, within thirty (30) calendar days of the request, used, possessed, sold or transferred drugs, alcohol or drug paraphernalia while the employee was working or while the employee was on the Employer's premises or operating the Employer's vehicle, machinery or equipment (other than in connection with the employee's official duties); or

Section 24.5 - Refusal To Undergo Testing.

(a) **Right to Refuse** - Employees have the right to refuse to undergo drug and alcohol testing. If an employee refuses to undergo drug or alcohol testing required by the Employer, no such test shall be given.

(b) **Consequences of Refusal** - If any employee refuses to undergo drug or alcohol testing required by the Employer, the Employer may impose appropriate discipline up to and including discharge from employment on ground of insubordination and any other appropriate grounds.

(c) **Refusal on Religious Grounds** - No employee who refuses to undergo drug or alcohol testing of a blood sample upon religious grounds shall be deemed to have refused unless the employee also refuses to undergo drug or alcohol testing of a urine sample.

Section 24.6 - Procedure For Testing.

(a) **Notification Form** - Before requiring an employee to undergo drug or alcohol testing, the Employer shall provide the individual with a form on which to (1) acknowledge that the individual has seen a copy of the Employer's *Drug and Alcohol Testing Policy*, and (2) indicate consent to undergo the drug and alcohol testing.

(b) **Test Sample** - The test sample shall be obtained in a private setting, and the procedures for taking the sample shall ensure privacy to employees to the extent practicable, consistent with preventing tampering with the sample. All test samples shall be obtained by or under the direct supervision of a health care professional.

(c) **Identification of Samples** - Each sample shall be sealed into a suitable container free of any contamination that could affect test results, be immediately labeled with the subject's social security number, be initialed by the subject, and be signed and dated by the person witnessing the sample.

(d) **Chain of Custody** - The Employer shall ensure that a written record of the chain of custody of the sample is maintained and ensure the proper handling of the sample in compliance with the provisions of the Minnesota *Drug and Alcohol Testing in the Workplace Act* pertaining to chain of custody.

(e) **Laboratory** - The Employer shall use the services of a testing laboratory which meets the criteria established by the Minnesota *Drug and Alcohol Testing in the Workplace Act* pertaining to testing laboratories; however, no test shall be conducted by a testing laboratory owned and operated by the City of Minneapolis.

(f) **Methods of Analysis** - The testing laboratory shall use methods of analysis and procedures to ensure reliable drug and alcohol testing results, including standards for initial screening tests and confirmatory tests. The testing laboratory shall perform each test analysis in accordance with the applicable standards of the licensing, accreditation or certification program listed in the Minnesota *Drug and Alcohol Testing in the Workplace Act* in which it participates.

(g) **Retention and Storage** - All blood and urine samples that produced a positive test result shall be retained and properly stored by the testing laboratory for at least six (6) months.

(h) **Test Report** - The testing laboratory shall prepare a written report indicating the drugs, alcohol, or their metabolites tested for, the types of tests conducted, and whether the test produced negative or positive test results, and the testing laboratory shall disclose that report to the Employer within three (3) working days after obtaining the final test result.

(i) **Positive Test Results** – In the event an employee tests positive for drug use, the employee will be provided, in writing, notice of his/her right to explain the test results. The employee may indicate any relevant circumstance, including over the counter or prescription medication taken within the last thirty (30) days which may have biased the test.

Section 24.7 - Rights Of Employees. Within three (3) working days after receipt of the test result report from the testing laboratory, the Employer shall inform in writing an employee who has undergone drug or alcohol testing of:

(a) A negative test result on an initial screening test or of a negative or positive test result on a confirmatory test;

(b) The right to request and receive from the Employer a copy of the test result report;

(c) The right to request within five (5) working days after notice of a positive test result a confirmatory retest of the original sample at the employee's expense at the original testing laboratory or another licensed testing laboratory;

(d) The right to submit information to the employer within three (3) working days after notice of a positive test result to explain that result; indicate any over the counter or prescription medications that you are currently taking or have recently (within the last month) taken and any other information relevant to the reliability of, or explanation for, a positive test result;

(e) The right of an employee for whom a positive test result on a confirmatory test was the first such result for the employee on a drug or alcohol test required by the Employer not to be discharged unless the employee has been determined by a certified chemical use counselor or a physician trained in the diagnosis and treatment of chemical dependency to be chemically dependent and the Employer has first given the employee an opportunity to participate in, at the employee's own expense or pursuant to coverage under an employee benefit plan, either a drug or alcohol counseling or rehabilitation program, whichever is more appropriate, as determined by the Employer after consultation with a certified chemical use counselor or a physician trained in the diagnosis and treatment of chemical dependency, and the employee has either refused to participate in the counseling or rehabilitation program or has failed to successfully complete the program, as evidenced by withdrawal from the program before its completion;

(f) The right to not be discharged, disciplined, discriminated against, or required to undergo rehabilitation on the basis of a positive test result from an initial screening test that has not been verified by a confirmatory test;

(g) The right, if suspended without pay, to be reinstated with back pay if the outcome of the confirmatory test or requested confirmatory retest is negative;

(h) The right to not be discharged, disciplined, discriminated against, or required to be rehabilitated on the basis of medical history information revealed to the Employer concerning the reliability of, or explanation for, a positive test result unless the employee was under an affirmative duty to provide the information before, upon, or after hire;

(i) The right to review all information relating to positive test result reports and other information acquired in the drug and alcohol testing process, and conclusions drawn from and actions taken based on the reports or acquired information;

(j) The right to suffer no adverse personnel action if a properly requested confirmatory retest does not confirm the result of an original confirmatory test using the same drug or alcohol threshold detection levels as used in the original confirmatory test.

(k) The right to have no entry made in any personnel file respecting the circumstances surrounding a required test, the administration of the test or the results thereof if the results are negative.

Section 24.8 - Action After Test. The Employer will not discharge, discipline, discriminate against, or require rehabilitation of an employee solely on the basis of a positive test result from an initial screening test that has not been verified by a confirmatory test. Where there has been a positive test result in a confirmatory test and in any confirmatory retest, the Employer will do the following unless the employee has furnished a valid medical reason for the positive test result:

(a) **First Offense** - The employee will be referred for an evaluation by a certified chemical use counselor or a physician trained in the diagnosis and treatment of chemical dependency. If that evaluation determines that the employee has a chemical dependency or abuse problem, the Employer will give the employee an opportunity to participate in, at the employee's own expense or pursuant to coverage under an employee benefit plan, either a drug or alcohol counseling or rehabilitation program, whichever is more appropriate, as determined by the Employer after consultation with a certified chemical use counselor or a physician trained in the diagnosis and treatment of chemical dependency. If the employee either refuses to participate in the counseling or rehabilitation program or fails to successfully complete the program, as evidenced by withdrawal or discharge from the program before its completion, and alcohol or drug abuse prevents the

employee from performing the essential functions of the job in question or constitutes a direct threat to property or the safety of others or otherwise constitutes a bona fide occupational qualification, the Employer may discharge the employee from employment.

(b) **Second Offense** - Where alcohol or drug abuse prevents the employee from performing the essential functions of the job in question or constitutes a direct threat to property or the safety of others or otherwise constitutes a bona fide occupational qualification, and the employee has previously received one program of treatment required by the Employer within the last five (5) years while an employee of the City of Minneapolis, the Employer may impose appropriate discipline up to and including discharge from employment.

(c) **Suspensions and Transfers** - Notwithstanding any other provisions herein, the Employer may temporarily suspend the tested employee or transfer that employee to another position at the same rate of pay pending the outcome of the confirmatory test and, if requested, the confirmatory retest, provided the Employer believes that it is reasonably necessary to protect the health or safety of the employee, co-employees, or the public.

(d) **Other Misconduct** - Nothing in this policy limits the right of the Employer to discipline or discharge an employee on grounds other than a positive test result in a confirmatory test, subject to the requirements of law, the rules of the Civil Service Commission, and the terms of any applicable collective bargaining agreement. For example, if evidence other than a positive test result indicates that an employee engaged in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in the Employer's workplace, the employee may receive a warning, a written reprimand, a suspension without pay for a period not to exceed ninety (90) calendar days, a demotion, or a discharge from employment, depending upon the circumstances, and subject to the above requirements.

Section 24.9 - Data Privacy. The purpose of collecting a body component sample of blood, breath, or urine is to test that sample for the presence of drugs or alcohol. A sample provided for drug or alcohol testing will not be tested for any other purpose. The name, initials and social security number of the person providing the sample are requested so that the sample can be identified accurately but confidentially. Information about medications and other information relevant to the reliability of, or explanation for, a positive test result is requested to ensure that the test is reliable and to determine whether there is a valid medical reason for any drug or alcohol in the sample. All data collected, including that in the notification form and the test report, is intended for use in determining the suitability of the employee for employment. The employee may refuse to supply the requested data; however, refusal to supply the requested data may affect the person's employment status. The Employer will not disclose the test result reports and other information acquired in the drug or alcohol testing process to another employer or to a

third party individual, governmental agency, or private organization without the written consent of the person tested, unless permitted by law or court order.

Section 24.10 - Appeal Procedures.

(a) Concerning disciplinary actions taken pursuant to this drug and alcohol testing policy, available appeal procedures are as follows:

(1) Non-Veterans on Probation: An employee who has not completed the probationary period and who is not a Veteran has no right of appeal to the Civil Service Commission.

(2) Non-Veterans After Probation: An employee who has completed the probationary period and who is not a Veteran has a right to appeal to the Civil Service Commission only a suspension of over thirty (30) days, a permanent demotion (including salary decreases), or a discharge, if the employee submits a notice of appeal within ten (10) calendar days of the date of mailing by the Employer of notice of the disciplinary action.

(3) Veterans: An employee who is a Veteran has a right to appeal to the Civil Service Commission a permanent demotion (including salary decreases), a suspension of over thirty (30) days or a discharge, if the employee submits a notice of appeal within sixty (60) calendar days of the date of mailing by the Employer of notice of the disciplinary action, regardless of status with respect to the probationary period. An employee who is a Veteran may have additional rights under the Veterans Preference Act, *Minnesota Statutes* §197.46.

(b) All notices of appeal must be submitted in writing to the Minneapolis Civil Service Commission, Room #100 Public Service Center, 250 South 4th Street, Minneapolis, MN 55415-1339.

(c) An employee who is covered by a collective bargaining agreement may elect to seek relief under the terms of that agreement by contacting the appropriate Union and initiating grievance procedures in lieu of taking an appeal to the Civil Service Commission.

Section 24.11 - Employee Assistance. Drug and alcohol counseling, rehabilitation, and employee assistance are available from or through the Employer's employee assistance program provider(s) (E.A.P.).

Section 24.12 - Distribution. Each employee engaged in the performance of any federal grant or contract shall be given a copy of this policy.

CITY OF MINNEAPOLIS
NOTIFICATION FORM AND
CONSENT FOR DRUG AND ALCOHOL TESTING

I acknowledge that I have seen and read the City of Minneapolis *Drug and Alcohol Testing Policy*. I hereby consent to undergo drug and/or alcohol testing pursuant to said policy, and I authorize the City of Minneapolis through its agents and employees to collect a urine, blood and/or breath sample from me for those purposes.

I understand that the procedure employed in this process will ensure the integrity of the sample and is designed to comply with medico legal requirements.

I understand that the results of this drug and alcohol testing may be discussed with and/or made available to my employer, the City of Minneapolis. I further understand that the results of this testing may affect my employment status as described in the policy.

_____ _____
Name (Please Print or Type) Social Security Number

_____ Date_____
Signature

_____ Date_____
Witness

ARTICLE 25
FITNESS FOR DUTY

Section 25.1 - Statement of Policy and Purpose. The Minneapolis Police Department and its employees know that the performance of law enforcement duties is inherently demanding and that such duties are sometimes performed under dangerous conditions and/or in a stressful environment. It is, therefore, important to the Department for the safety of its employees and the public to ensure that all personnel in the service of the Department are medically, psychologically and emotionally fit for duty. It shall be the policy of the Minneapolis Police Department to require fitness for duty examinations in accordance with the provisions set forth herein.

It is the purpose of this policy to establish standards and procedures for identifying and diagnosing officers of the Department who may suffer from medical, psychological or emotional conditions which impair their ability to perform their job duties satisfactorily. This policy shall be administered in a manner which is consistent with the Department's desire to treat affected employees with dignity and respect under such circumstances and to provide information and assistance to them concerning their fitness for duty.

It is the goal of the City of Minneapolis to have healthy and productive employees and to facilitate successful treatment for those employees experiencing debilitating health problems. In furtherance of this goal, the Department is committed to applying this Policy to promote rehabilitation, rather than discipline, while minimizing the interruption to the employee's life and career and to the employer's operations.

Section 25.2 - Circumstances Requiring Fitness For Duty Examinations. The Department may require an employee to be examined under this policy in the circumstances described below:

(a) Where there exists a reasonable cause to believe, based upon specific observations and facts and rational inferences drawn from those observations and facts, that an employee may not be medically, psychologically or emotionally fit to perform the essential functions of the position to which he or she is assigned without accommodation. Such reasonable suspicion must be based upon the observations of at least two supervisors or co-workers who have first-hand knowledge or upon reliable information provided to a supervisor that the employee is currently exhibiting conduct which reasonably demonstrates that:

(1) the employee may be suffering from a physical or mental condition; and

(2) such condition:

(A) prevents the employee from effectively performing his/her duties; and

(B) is not likely to be healed or remedied without professional treatment or intervention.

(b) Where an employee is returning to active service after a leave of absence without pay or similar absence or where the employee has been outside of the Department's observation or control for a period longer than six (6) calendar months.

(c) Where an employee is returning to active service after a serious illness, injury or medical condition whether or not the employee's personal physician has placed restrictions on the employee's job-related activities.

(d) Where an employee has been involved in a critical incident where the potential for physical or psychological trauma to the employee was significant.

(e) Where the employee contends he/she is not medically, psychologically or emotionally fit for duty.

The provisions set forth in paragraphs (b) and (c) above shall not apply to psychological evaluations. A physician evaluating the physical fitness for duty may refer an employee for a psychological evaluation pursuant to the provisions of Section 25 .5 below.

Section 25.3 - Procedures for Evaluating an Employee Exhibiting Behavior Creating Suspicion of a Health Impairment Affecting His/Her Ability to Perform Job Duties.

Step 1

The employee's immediate supervisor shall personally interview the employee for the purpose of determining whether a problem exists and, if so, whether the situation requires additional measures. During the interview the employee shall be given the opportunity to explain the behavior or circumstances which created the cause for concern. After interviewing the employee, the supervisor shall:

- conclude that the concern is unfounded, does not impair the employee's ability to perform his/her duties effectively, or is of a nature that can be remedied without the intervention of a physician or other licensed medical provider; or

- counsel the employee regarding the situation and advise the employee of the supervisor's intention to monitor ongoing performance in the expectation of observing improvement; or

- recommend to the appropriate Deputy Chief that the employee be considered for a referral for a fitness for duty evaluation.

Except in circumstances where the supervisor concludes that the concern is unfounded, the supervisor shall also encourage the employee to contact the Employee Assistance Program (EAP).

This Step 1 is not required in situations involving: physical injuries which clearly impair performance; imminent danger to self or others; or critical incidents.

Step 2

Where the supervisor recommends to the appropriate Deputy Chief that the employee be considered for referral for an evaluation, the supervisor shall prepare a written report which articulates the specific facts which establish the reasonable basis for requesting that the employee be referred to a fitness for duty examination, including the specific impact on the employee's ability to effectively perform his/her duties. A copy of the supervisor's written report to the Deputy Chief shall be provided to the employee, unless it is believed that the information in the report is likely to cause harm to the employee or to others, in which case the Deputy Chief shall so inform the POFM of the decision, together with a notice that the employee may wish to seek the guidance of the Federation.

Step 3

Upon receipt of the supervisor's written report, the appropriate Deputy Chief will evaluate the case. The Deputy Chief shall:

- conclude that the concern is unfounded, does not impair the employee's ability to perform his/her duties effectively, or is of a nature that can be remedied without the intervention of a physician or other licensed medical provider; or

- recommend that the employee's supervisor monitor ongoing performance in the expectation of observing improvement; or

- refer the employee to a professional for a fitness for duty evaluation.

Section 25.4 - Directives To Be Examined; Notice. At the time an employee is required by the Department to undergo a fitness for duty examination, the Department shall inform the employee of the reason(s) for the examination and it shall provide the employee with a copy of all information provided by the Department to the examining physician or other licensed medical provider and a summary of all oral communication therewith, unless it is believed that the information in the report is likely to cause harm to the employee or to others, in which case the POFM will be informed of the decision. If appropriate, the Department may relieve the employee from duty with pay while his/her fitness for duty is being determined. Except as described below in cases involving psychological examinations, refusal to submit to a required fitness for duty examination and/or complete and return appropriate paperwork shall subject the employee to disciplinary action. In such cases, the employee on leave without pay shall not be

permitted to work until the fitness for duty examination has been conducted and a fitness for duty finding has been made.

At such time as the Department determines that an employee shall be required to submit to a fitness for duty evaluation and/or during the time any controversy concerning the employee's fitness for duty is being resolved, the Department may reassign the employee to other duties or relieve the employee from duty in its sole discretion. In the latter event, the employee shall be placed on paid leave of absence status which may be revoked if the employee fails to fully cooperate with the Department or its examining physicians and/or other licensed medical providers.

Section 25.5 - Psychological Evaluations; Reasonable Basis; Appeals. No psychological evaluations shall be required in the absence of a recommendation by the Department's examining physician or other licensed medical provider who has a reasonable basis for requiring the psychological evaluation. If able the Department and/or Department's examining physician shall inform the employee of such reasonable basis at the time he/she is ordered to report for the required psychological examination unless the examining physician or other licensed medical provider documents with reasonable specificity that disclosure of the information in the report is likely to cause harm to the employee or to others. In such cases, the information shall be handled and/or disclosed in a manner consistent with prevailing medical and/or legal authority.

If the employee disputes the accuracy or legitimacy of the facts upon which the Department's examining physician or other licensed medical provider has relied on concluding that a reasonable basis exists for the required psychological evaluation, the employee may file a grievance contesting the requirement that he/she submit to the examination. In such event, the employee shall not be required to report for the psychological evaluation until the grievance has been resolved under the expedited arbitration procedures of the Collective Bargaining Agreement. The arbitrator's authority shall be limited to making findings of fact with regard to the disputed facts underlying the reasonable basis. The arbitrator does not have the authority to overturn the medical opinion of the examining physician or other licensed medical provider. The Department may relieve the employee from duty without pay or reassign the employee to other duties during the pendency of the grievance resolution proceedings but shall not discipline or discharge the employee for refusing to submit to the psychological evaluation unless the employee refuses to undergo psychological evaluation after an arbitrator has determined, or the Department and the Federation agree, as to the accuracy or legitimacy of the underlying factual basis for the referral. If an employee is relieved without pay, he/she may use available benefits in order to continue in paid status. If an employee is relieved without pay and it is subsequently determined that the Department lacked a reasonable basis to require a psychological evaluation, the Department shall make the employee whole by paying the employee for lost work days and/or restoring his/her benefit banks.

Section 25.6 - Examining Physicians; Costs. The physicians and/or other licensed medical providers relied upon by the Department in the administration of this policy shall be selected and contracted by the Department. To minimize the delay in evaluating the employee, the

Department shall have more than one physician and/or licensed medical personnel to conduct fitness for duty evaluations.
The Department shall bear all costs associated with fitness for duty examinations required under this policy and all time required by such examinations shall be regarded as "work time" under the Fair Labor Standards Act and the provisions of this Collective Bargaining Agreement.

Section 25.7 - Medical Records; Private. All medical data and records relied upon by the Department in the administration of this policy shall be classified as private data on individuals as defined by the Minnesota Government Data Practices Act, Minn. Stat. § 13.01, et. seq. . All reports, correspondence, memoranda or other records which contain medical data on an employee shall be made available only to the Chief of the Department, those who have the authority and responsibility to represent the interests of the Department in claims involving the Department in any forum or otherwise and others who may specifically be authorized by the employee to receive such data. The Department shall request an opinion from the Office of the City Attorney in instances where questions arise over the proper distribution or handling of medical data relied upon by the Department in the administration of this policy or in connection with the Department's response to any finding that an employee is not fit for duty.

Section 25.8 - Adverse Findings; Appeals. Where it is determined that an employee is not fit for duty, the examining physician shall prepare a written report which includes the following:

(a) A statement as to whether the employee, is medically and/or psychologically able to perform the essential functions of the job; and

(b) A statement of what, if any, work restrictions the employee has.

(c) A prognosis for recovery.

A copy of the examining physician's written report shall be provided to the Chief of the Department, those who have authority and responsibility to represent the interests of the Department in claims involving the Department in any forum or otherwise, and others who may specifically be authorized by the employee to receive such data.

In addition to the report provided to the Chief of the Department, the employee may also at the discretion of the examining physician, be provided with additional information including:

(a) A specific diagnosis of the medical condition and the reasons why such problem renders the employee unfit for duty;

(b) A statement of any accommodation that would enable the employee to perform the essential functions of his/her job; a specific treatment plan, if any; and

(c) A prognosis for recovery and a specific schedule concerning re-examination;

unless the examining physician or other licensed medical provider documents with reasonable specificity that disclosure of the information in the report is likely to cause harm to the employee or to others. In such cases, the information shall be handled and/or disclosed in a manner consistent with prevailing medical and/or legal authority.

In the event the employee disagrees with the determination of the examining physician or other licensed medical provider that he/she is not medically, psychologically, or emotionally fit for duty, the employee may submit medical information from a physician or other licensed medical provider of his/her own choosing. The employee shall be responsible for all costs associated with the second opinion unless such costs are covered by the employee's medical insurance. Where the employee's physician and the Department's physician have issued conflicting opinions concerning the employee's fitness for duty, the Department shall encourage the two physicians to confer with one another in an effort to resolve their conflicting medical opinions. If they are unable to do so within fifteen (15) calendar days after the date of the second opinion, the dispute concerning the employee's fitness for duty may be submitted by either party to a neutral examining physician or other licensed medical provider (the "Neutral Examiner") who has expertise regarding the medical, psychological or emotional disorder involved and who is knowledgeable of the environment in which law enforcement duties are performed. The decision of the Neutral Examiner shall be final and binding on the parties. If the Neutral Examiner determines it necessary, the employee shall submit to an evaluation by the Neutral Examiner. If the Neutral Examiner determines that the employee is not fit for duty, he/she shall issue a written report which includes the information specified above. Notwithstanding the Provisions of 25.6, the cost of the Neutral Examiner, to the extent not covered by insurance, shall be split equally between the City and the Federation. The dispute resolution procedures outlined herein shall not apply to Workers' Compensation cases. The Federation and the Department shall establish a list of not less than three qualified Neutral Examiners. In the event the services of a Neutral Examiner are required, the employee shall select the Neutral examiner from the established list.

Section 25.9 – Layoff for Medical Reasons. When an employee who has been found to be not medically or psychologically fit for duty has exhausted his/her eligibility for Family Medical Leave, sick leave, vacation, and compensatory time banks, the employee may be laid off for medical reasons until he/she is again capable of resuming the duties. The employee's recall from layoff shall be governed by Section 11.3; however, the Department may require a satisfactory medical report from the City's health services provider(s) before re-employment. Generally, if the period of time an employee is expected to be off the job is less than six months, a leave without pay (Medical Leave of Absence) may be more appropriate.

ARTICLE 26
LEGAL COUNSEL

Section 26.1 - Legal Counsel. The City shall provide legal counsel to defend any employee against any action or claim for damages, including punitive damages, subject to limitations set forth in *Minnesota Statutes* §466.07, based on allegations relating to any arrest or other act or

omission by the employee provided: the employee was acting in the performance of the duties of his or her position; and was not guilty of malfeasance in office, willful neglect of duty or bad faith.
The City may undertake its obligation to its employee by assigning the matter to the City Attorney or by employing outside counsel at its discretion. However, where there is a conflict of interest between the City and its employee, the City Attorney may represent or assign outside counsel based upon the provisions of this article. The decision on whether a conflict exists shall be decided in the first instance by the City Attorney. The City shall pay the costs and expenses associated with such separate and independent counsel in instances where the limitations set forth in *Minnesota Statutes* §466.07 do not apply.

Where the City determines that its position is in conflict with that of its employee, the City shall notify the employee of the conflict and advise the employee that he or she is entitled to select independent counsel pursuant to the procedures set forth in this article.

Where the employee believes that his or her position in the litigation is in conflict with that of the City, the employee may request that he or she be represented by independent counsel. The employee shall make such request in writing and such request shall specify the facts upon which the employee relies in asserting the conflict. The City shall have five (5) business days from the date it receives such request to grant or deny the request and notify the employee in writing of its decision. If denied, the City shall state in such notice the factual and/or legal basis upon which the request is denied. If the request is not denied within the five (5) business day period, it shall be deemed granted.

If the City timely denies the request for independent counsel, the employee may appeal the decision within five (5) business days of the date on which he or she receives the City's decision by giving written notice of appeal to the City. The appeal shall be heard by a neutral third person who possesses the knowledge and experience necessary to determine whether a conflict of interest exists and who has been mutually selected by the City and the Federation. The Parties may present evidence and testimony before the decision maker. The hearing and review of the decision shall be governed by the Uniform Arbitration Act, *Minnesota Statutes* §572.01, et seq.

An employee entitled to independent counsel under this article may select counsel from among the attorneys on the list approved by the City and the Federation. The Federation shall propose attorneys for the list subject to approval by the City based on the City's fee schedule. Such approval shall not unreasonably be withheld. Notwithstanding approval by the City, no firm shall be entitled to be placed on the list until it has agreed to undertake representation in such matters at the standard hourly rate negotiated by and among the Federation, the City, and all approved firms. The list of approved attorneys shall contain not less than three firms.

Section 26.2 - Assignment of Judgment for Costs. Each defendant represented by City-paid counsel shall assign to the City any judgment for costs or disbursements awarded in favor of such defendant.

Section 26.3 - Liability Insurance. The City may, at its option, maintain a standard policy of liability insurance covering employees against the actions and claims referenced in Section 25.1 above. The City shall pay all premiums for such coverage.

ARTICLE 27
NEW OFFICER ORIENTATION

The President of the Federation, or his/her designee, shall be granted one (1) hour of regularly scheduled new Officer orientation class time for the purpose of explaining the rights and obligations of employees under the *Public Employment Labor Relations Act of 1971*, as amended.

ARTICLE 28
WORK ASSIGNMENTS

If an employee's permanent work assignment is changed from one precinct or division to another, the employee shall be sent specific written notice of the reason for the transfer at least ten (10) calendar days before it becomes effective. A work assignment is "permanent" if it continues for more than thirty (30) consecutive calendar days. The Change in Shift compensation provisions of Section 9.7 shall not apply in the event of a permanent transfer even though an employee's work schedule in the new assignment may differ from his/her posted schedule in the prior assignment. However, if the Department fails to give the required advance notice of the transfer, all hours worked during the period commencing with the first day of work after the effective date of the transfer and ending with the 10th day following the date on which the notice was given, shall be considered Overtime and, therefore, subject to the provisions of Section 10.2 of this Agreement.

ARTICLE 29
NON-DISCRIMINATION AND HARASSMENT PREVENTION

In the application of this Agreement's terms and provisions, no bargaining unit employee shall be discriminated against in an unlawful manner as defined by applicable City, State and/or Federal law or because of an employee's political affiliation or membership in the Federation.

The Employer and the Union reaffirm the Employer's obligation to maintain a work environment which is hospitable to all employees, managers and supervisors. To that end, the Employer and the Union shall continue to develop and refine policies that prohibit harassment and abuse in the workplace by any employee, manager or supervisor. The Employer agrees to investigate all allegations of violations to that policy. Upon finding that a violation of the policy has occurred, the Employer shall take appropriate remedial and/or corrective action and where appropriate, encourage the resolution of any resulting dispute through an established *alternative dispute resolution* (ADR) system.

ARTICLE 30
INCORPORATION OF CIVIL SERVICE RULES

Section 30.1 – Probationary Period. Police Officers shall serve a twelve month probationary period upon initial hire. Completion of probation requires twelve (12) full months of actual work.

Section 30.2 – Job Classifications. The parties recognize that work and methods of service delivery may change from time to time. The general responsibilities described below are intended to establish guidelines to determine to which job classification work should be assigned. However, these descriptions are not intended to be exhaustive or to limit the ability of the City to respond to changing demands.

Police Officer – Front line sworn employee to perform the following as directed by a superior: patrol assigned areas, respond to 911 calls, detect, deter and conduct primary investigation of crimes, maintain law and order, make arrests, assist the public and assure public safety. Not supervisor as defined by Minnesota Statute 179A.03, subd. 17.

Sergeant - Administer the directives of superiors and guide the actions of subordinates in enforcing Federal, State and local laws for the Minneapolis Police Department; perform secondary case investigation of crimes and assure public safety. Supervisor as defined by Minnesota Statue 179A.03, subd. 17.

Lieutenant - Commands and supervises major areas or programs as defined by the Chief, enforces compliance with departmental policies, procedures and goals. Supervisor as defined by Minnesota Statue 179A.03, subd. 17.

Captain - Manages the operations of a division, takes responsibility for special assignments as defined by the Chief, directs resources to achieve goals and objectives consistent with the directives of the Chief. Supervisor as defined by Minnesota Statue 179A.03, subd. 17.

Investigative Duties - The following guidelines will be used to determine the respective investigative duties of Sergeants and Patrol Officers.

Investigative Duties Performed by Sergeants:

- Conduct follow-up investigations of cases including interviewing suspects and witnesses and taking formal statements or conducting "Q&A" interrogations from such people.
- Present cases to prosecutors for charging.
- Direct the work of patrol officers.
- Appear as "Affiant" on applications for a search warrant.
- Coordinate and direct the execution of search warrants.
- Coordinate and direct the execution of wire taps.
- Authorize probable cause arrests.

Investigative Duties Which May Be Performed by Patrol Officers at the Direction of a Sergeant (or other supervisor):

- Follow, search for, detain or arrest suspects.
- Conduct surveillance.
- Assist in execution of search warrants under supervision of a sergeant.
- Listen on wiretaps.
- Canvass the area surrounding a crime scene to locate and identify evidence, witnesses or suspects.

Assignment of Personnel to Specific Positions/Duties. The parties agree that the following positions shall be assigned to personnel of the specified rank:

Positions to be filled by Sergeants:

- Narcotics "day case" assignment
- DEA Task Force
- Weapons Unit
- JTTF

Non-supervisory positions which may be filled by Patrol Officers:

- Fugitive Task Force
- VCAT
- VOTF
- ISAC

Minnesota Gang Strike Force (MGSF):

Up to two patrol officers may be assigned to the MGSF for each MPD sworn employee having the rank of sergeant or higher who is assigned full-time to the MGSF.

MPD Narcotics Unit:

Patrol Officers assigned to the Narcotics Unit may perform the following tasks normally assigned only to Sergeants with regard to case work on narcotics investigations:

- Conduct follow-up investigations of cases including interviewing suspects and witnesses and taking formal statements or conducting "Q&A" interrogations from such people.
- Present cases to prosecutors for charging.
- Appear as "Affiant" on applications for a search warrant subject to the prior approval of a sergeant.

Community Response Team (CRT):

Patrol Officers assigned to a precinct CRT may perform the same tasks as a Patrol Officer assigned to the Narcotics Unit when the CRT Officer is working on a narcotics investigation.

Section 30.3 – Working Out of Class.

a. *General Rule*. Generally, employees are considered as working within the correct class if at least sixty percent of their assigned duties are those commonly attributed to that class. If it is found that for a period of five consecutive scheduled work days or more an employee spends more than forty percent of the time performing assigned duties and responsibilities that are normally those of a different class than that to which the employee was certified, the duties assigned to that employee shall be reassigned to an employee in the correct classification and the employee who was working out of class shall receive compensation for the out of class work as if the employee had been properly detailed to the position in accordance with Section 30.5. In all cases the period of compensation shall run from the first work day on which he/she assumed the out of class duties to the day on which such out of class duties were reassigned.

b. *Exceptions.* No out of class compensation shall be payable to an employee who performs out of class work due to a career enrichment or limited duty assignment provided the scope and duration of such assignment is approved by the Department and the Federation prior to the assumption of the duties by the employee.

c. *Watch Commander*. The employer may assign watch commander duties to a sergeant who has received watch commander training. When a sergeant is assigned watch commander duties, he/she shall receive a pay differential equal to the difference between the hourly rate of a first step lieutenant and the hourly rate of a top step sergeant for time worked as a watch commander.

d. *Dispute Resolution.* Effective upon ratification of this agreement by both parties, a Committee shall be formed to review the type and amount of work associated with a specific assignment to promoted sworn personnel in the police department to determine: whether the work is more appropriately performed by an employee of a different rank; and/or whether the work is excessive compared to most other employees of the same rank.

    i. *Committee Structure.* The Committee shall consist of five members. Two members will be selected by the Police Chief and two selected by the Federation. The fifth member will the HR Generalist assigned to the Police Department. Membership may change from case to case; however, the parties are encouraged to balance continuity and experience against knowledge of specific circumstances. The Committee may invite additional people with knowledge of a situation to attend meetings to assist the Committee. However, such additional people will not be members nor participate in decision making or reaching consensus.

ii. *Committee Tasks.* The Committee will establish and publish the criteria by which it will evaluate the issues within the scope of its authority. The Committee will then use these criteria to evaluate matters brought before it on a case by case basis. Upon reviewing a case, the Committee shall make a written recommendation as to its findings and an appropriate remedy, if any. The Committee shall attempt to reach a decision by consensus. If consensus is not possible, a written recommendation shall still be prepared including statements of the differing opinions. The written report shall be prepared by the HR Generalist, subject to review and comment by the Committee members. The Committee does not have the authority to implement or require implementation of its recommendation(s). The Committee shall complete its work within thirty (30) days of the initial referral of the matter to the Committee.

iii. *Final Authority of Chief.* The Chief of Police shall have the final authority on issues raised by the group, subject to right of the Federation to assert a grievance under the Collective Bargaining Agreement. The Chief shall act upon the recommendation of the Committee and advise the Committee of his/her decision within thirty (30) days of receipt of the Committee's recommendation.

iv. *Grievances.* A grievance arising from a dispute regarding matters within the scope of authority of the Committee may not be filed until after the Committee has first considered the issue or after the deadline for the Committee to complete its work has passed. If an issue is not resolved after the Committee has made its recommendation and a grievance is filed by the Federation, both parties shall retain all rights or positions they would have had in the grievance notwithstanding the existence of the Committee. However, the recommendations of the Committee may be offered as evidence in an arbitration hearing.

Section 30.4 – Promotions.

a. *Examinations.* Promotional examinations, as defined in Civil Service Rule 6.05, shall be offered to current sworn employees in the classified service who meet minimum qualifications to compete for promotion to the classes of sergeant, lieutenant or captain. The Human Resources (HR) Department shall be responsible for developing job-related examination components for all promotional examinations. In doing so, the HR Department will involve the police administration and the Federation to ensure the components consist of bona fide occupational qualifications. Examinations may consist of one or more of the following components: written test, oral interview, rating of education, skills, and/or

experience, practical/work sample, performance history, physical performance, or other components so long as they are discussed with the police administration and the Federation. The HR Department retains the discretion to establish the examination components and the relative weight of each component. The candidates advancing to successive components in the examination may be restricted to the most highly qualified candidates. Once the components and/or criteria are posted and applications are received, the Employer shall not deviate from the declaration without a legitimate business reason and after providing proper notice and rationale to the Federation for comment and to the candidates. Matters related to unilateral changes in the criteria and/or components after receiving applications shall be subject to Expedited Arbitration as defined in Section 5.6, notwithstanding the "mutual agreement" provisions.

b. *Disqualification.* The Human Resources Department may refuse to examine, refuse to certify, or remove from a list of eligible candidates an individual in accordance with the provisions of Civil Service Rules 6.12 and 7.04

c. *Ties.* Whenever two or more candidates have the same score on the overall examination, the Human Resources Department may break the tie in accordance with the provisions of Civil Service Rule 6.13.

d. *Eligibility Lists.* The Human Resources Department may determine the expiration date of a list of eligible candidates for the classes of sergeant, lieutenant and captain. The expiration date for the list of eligible candidates shall be provided on the job posting for these classes.

e. *Ranking of Eligible Candidates.* Eligible candidates for the classifications of sergeant, lieutenant and captain shall be ranked from highest to lowest based upon their composite examination score.

f. *Certification; Rule of 3.* Upon receiving a requisition to fill a vacancy, the Human Resources Department will certify and send to the Department the names of the three top-ranking eligible candidates for a single vacancy and one additional person by rank order for each additional vacancy. Certification shall be made first from a layoff list generated from abolishment of a position, then from a medical layoff list and then from the examination list.

g. *Probation.* Employees promoted to a different job class must serve a probationary period of six months of actual work in the promoted class. Completion of probation requires working six full months under the direct control and supervision of an MPD supervisor. However, temporary service in a position immediately preceding certification to that position, without interruption, shall count towards satisfaction of the probationary period. Because the promotion or change to a different job class requires employees to demonstrate different job skills or assume additional responsibilities, their job performance in the new classification is to be evaluated by

the Department as if they were new employees. Employees who demonstrate inappropriate conduct or are substandard in the performance of their new responsibilities are subject to removal and reassignment to the classification in which they served before promotion. Such action taken during probation is not grievable.

However, employees who exhibit misconduct or who are substandard in the performance of their responsibilities for reasons which would also affect their performance in the prior job may be subject to disciplinary action up to discharge. Permanent employees may grieve such actions.

Section 30.5 – Temporary Assignments (Details). The Department may assign (detail) an employee on a temporary basis for up to six (6) months, or such other period as may be expressly established by the terms of this Agreement, if: the vacancy is pending classification or appointment from a list of qualified candidates; or the vacancy is of a temporary nature. The detail shall terminate once the condition upon which the detail was based no longer exists. If a detail used to fill a temporary vacancy terminates by reason of the vacancy being deemed "permanent" and there is no current list of qualified candidates to fill vacancies in the rank, a new detail of not more than six (6) months may be initiated, provided: the Employer shall proceed as soon as possible to establish a list of qualified candidates; the detail shall terminate not less than thirty (30) days after the establishment of a list of qualified candidates is established; and the period of the combined details does not exceed twelve (12) months. In no event shall a detail be used to fill a vacancy for more than twelve (12) months.

The department retains the sole discretion to determine which employee to select. So long as the selection was based upon an articulable business reason, the selection is not grievable. It is the department's responsibility to inform the person approved for temporary assignment that the assignment does not confer any permanent change in status. The salary of an employee who is detailed to work in a higher classification shall be set at the salary step of the schedule for the new job classification that is the closest to representing a pay increase of 5% over the salary last received by such employee in the lower classification. If the employee would have been entitled to a step increase in the lower classification within 120 days of the date on which he/she accepts the detail, such step increase shall be considered before applying the 5% provision of the preceding sentence. If the detailed employee becomes eligible for a step increase in his/her permanently certified position while serving the detail, the detail wage shall be recalculated using the "5% rule" above. A detailed employee is not eligible for step progression other than outlined in the previous sentence. Upon the conclusion of the detail, the employee shall be returned to the pay step on which he/she would have been had the detail not occurred. Disputes arising from alleged violations of this Section 30.5 shall be subject to the Expedited Arbitration provisions of Article 5 of this Agreement at the request of the Federation notwithstanding the "mutual agreement" provisions in Article 5.

Section 30.6 – . Transfers between the Minneapolis Police Department and the Minneapolis Park Police Department ("Park Police") are not permitted. Sworn personnel employed by the Park Police may be considered for hire to the classification of Patrol Officer without placement on an eligible list and in accordance with the terms set forth herein. Before a Park Police Officer may be hired,

he/she shall pass a physical exam, psychological exam and background check administered by the City or its agents in a method approved by the Chief. The MPD may, at its sole discretion, determine what training is necessary before a newly hired employee from the Park Police may assume full duties as a sworn MPD Patrol Officer. Notwithstanding any provisions of Section 7.8 to the contrary, if a Park Police officer is hired as a Minneapolis Patrol Officer, time served in the Park Police shall be included as City seniority for the purpose of determining the employee's vacation accrual rate and placement on the salary schedule. If the Park Police had included prior service credit for time served in the MPD in determining the employee's compensation and vacation accrual rate as a Park Police employee, such prior time served at the MPD shall also be included upon rehire by MPD as "time served in the Park Police" under the preceding sentence. Neither time served in the Park Police nor time served in the MPD prior to service in the Park Police will count toward: fulfilling in-service time requirements for competing in promotional examinations; computing seniority in promotional examinations; determining the order or eligibility for bids for assignments and vacations, determining the order of layoffs; or determining other priorities among employees. All Park Police Officers hired by MPD are "newly hired employees" as defined under Section 9.1 (h) of this Agreement and subject to all provisions applicable thereto except with regard to placement on the wage and vacation schedules as specified in this Section.

Section 30.7 – Reinstatement of Employees Who Resigned from the Classified Service. Former sworn employees may be reinstated to the top of an open list of eligible candidates for the class they last held providing the conditions listed below are met. If no vacancies exist in the class they last held, reinstatement may also be to the open list of a lower classification held by them. The conditions for reinstatement are:

A. They successfully completed a probationary period in that class;

B. They resigned in good standing and not in lieu of discharge;

C. They requested reinstatement within two years of the resignation;

D. They completed a satisfactory medical, psychological, and physical fitness examination if the Department or the Human Resources Department determines that such an exam is necessary; and,

E. They are approved for reinstatement by the Department.

A reinstated employee will, upon appointment, begin to accrue seniority rights, vacation eligibility, sick leave, and other Civil Service rights and benefits the same as any other new employee. Service prior to resignation will be included for the purpose of determining the employee's vacation accrual and salary, but will not be considered for purposes such as: fulfilling in-service time requirements for competing in promotional examinations; computing seniority in promotional examinations; determining order of layoffs; determining the order of bids for assignments and vacations; or determining other priorities among employees.

Following reinstatement, an employee will, upon request, have his/her prior service counted for

the purpose of reaching the minimum years of service requirement to be eligible for the Accrued Sick Leave Retirement Plan. However, such years of prior service will only be counted after such employee has accumulated sufficient sick leave credits following reinstatement or re-employment to meet the minimum sick leave accrual requirements. Prior years of service shall not be applied to an employee reinstated or re-employed for the second or subsequent time.

ARTICLE 31
SAVINGS CLAUSE

Any provisions of this Agreement held to be contrary to law by a court of competent jurisdiction from which final judgment or decree no appeal has been taken within the time provided by law, shall be void. All other provisions shall continue in full force and effect.

ARTICLE 32
DURATION AND EFFECTIVE DATE

Section 32.1 This Agreement shall be effective as of the first day of January, 2009 and shall remain in full force and effect to and including December 31, 2011 subject to the right on the part of the City or the Federation to open this Agreement by written notice to the other Party not later than June 30, 2011. Failure to give such notice shall cause this Agreement to be renewed automatically for a period of twelve (12) months from year to year.

Section 32.2 In the event such written notice is given and a new Agreement is not signed by the expiration date of the old Agreement, then this Agreement shall continue in force until a new Agreement is signed. It is mutually agreed that the first meeting will be held no later than twenty (20) calendar days after the City or Federation receives such notification.

Section 32.3 Employees who retire after the expiration of this Agreement but before the execution of a successor agreement, shall be entitled to compensation for hours worked after the expiration of the Agreement at the rate of pay established pursuant to the successor agreement.

[SIGNATURE PAGE TO FOLLOW]

SIGNATORY PAGE

NOW, THEREFORE, the Parties have caused this Agreement to be executed by their duly authorized representatives whose signatures appear below:

FOR THE CITY:

Timothy O. Giles — Date
Director, Employee Services

FOR THE FEDERATION:

John Delmonico — Date
President

APPROVED AS TO FORM:

Assistant City Attorney — Date
For City Attorney

James P. Michels — Date
Federation Attorney

CITY OF MINNEAPOLIS:

Steven Bosacker — Date
City Coordinator

COUNTERSIGNED:

Finance Officer — Date

ATTACHMENT "A"

CITY OF MINNEAPOLIS

AND

POLICE OFFICERS FEDERATION OF MINNEAPOLIS

LETTER OF AGREEMENT
Medical Screening for Air Purifying Respirators

RECITALS

The City of Minneapolis (hereinafter "Employer") and The Police Officers' Federation of Minneapolis (hereinafter "Federation") are parties to a Collective Bargaining Agreement (the "CBA") that is currently in force.

The Employer has determined that all sworn personnel should be fitted for Air Purifying Respirators ("APRs").

The Occupational Safety and Health Administration ("OSHA") regulations provide that before fitting employees for an APR, the employee must provide medical information by completing a questionnaire or having a physical examination.

The Employer desires to use the medical information questionnaire for screening and to require all sworn personnel to complete the questionnaire.

The Federation has asserted that the requirement that all employees complete the questionnaire constitutes a "term and condition of employment" as defined by the Minnesota Public Employees Labor Relations Act ("PELRA").

The Federation has asserted concerns that the disclosure of medical information may have an adverse impact on the employment status of some of its members.

The parties desire to minimize the potential for future disputes and to proceed with providing APRs to all eligible employees on the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE IT IS HEREBY AGREED AS FOLLOWS:

The Employer may require all employees in the rank of patrol officer, sergeant, lieutenant and captain to complete the Respirator Certification Questionnaire (the "Questionnaire") in the form attached hereto as Exhibit A; provided that the same policies, practices and requirements as set forth herein are applied to all sworn personnel employed by the Department.

Upon completion, the employee will place the Questionnaire in a sealed envelope and return the envelope to his/her supervisor. All such envelopes will remain sealed and be sent to the City Doctor for review and evaluation. After they are reviewed, the Questionnaires will be returned to the Human Resources unit of the Department because the City Doctor does not have the capacity to store all of the Questionnaires. The Questionnaires will be enclosed in an enveloped marked "confidential" and stored by the Human Resources unit in a locked file cabinet. Other than filing and storing the documents and retrieving them at the request of the employee or the City Doctor, no MPD personnel will review or be allowed access to the contents of the Questionnaire. Further, the contents of the Questionnaire cannot be used against the employee in any action having an adverse impact on the employee's employment status.

If, based on the information in the Questionnaire, the City Doctor has concerns as to whether the employee would be able to safely wear a tight fitting APR mask, the employee may be required to be examined by the City Doctor.

If the City Doctor determines, whether by review of the Questionnaire or physical examination of the employee, that the employee cannot wear an APR, the employee will not be issued this type of mask and accommodations will be made for the employee to be provided with an alternative form of respiratory protection, if needed. Further, such a determination will have no adverse impact on the employee's employment status or eligibility for promotion unless the City Doctor discovers a serious, threatening health condition that would prevent the employee from safely and fully performing his/her duties as a police officer.

If the City Doctor discovers, whether by review of the Questionnaire or physical examination of the employee, evidence of a serious, threatening health condition that the doctor believes could prevent the employee from safely and fully performing his/her duties as a police officer, the City Doctor shall refer the employee to his/her personal physician. The employee shall have twenty-one (21) days from the date of referral by the City Doctor to obtain and submit to MPD Human Resources written verification from his/her personal physician that he/she is fit for duty. Employees who do not timely submit such written verification shall be referred to the City Doctor for a fitness for duty evaluation. The employee's personal physician will be provided with documentation as to the essential function of a police officer so he/she is able to make an informed decision as to the employee's duty status.

If the City Doctor discovers, whether by review of the Questionnaire or physical examination of the employee, evidence of a condition the nature of which the City Doctor believes may be immediately life-threatening, the City Doctor shall refer the employee to his/her personal

physician. In such circumstances, the employee must be evaluated by his/her person physician before he/she can return to work in any capacity. For the day on which such referral is made and for the next two full days thereafter, the employee shall be placed on paid "administrative leave," except to the extent that he/she was not scheduled to work such days or had previously taken such days off. The employee may not return to work until he/she has obtained and submitted to MPD Human Resources written verification from his/her personal physician that he/she is fit to return for full duty or to return to work in some limited capacity. If the employee is not declared fit to return to work prior to the expiration of the Administrative Leave, he she may use accrued vacation, sick leave or compensatory time. If the employee's condition requires treatment and results in restrictions on his/her activities for more than one week, the employee must be examined by the City Doctor before returning to work even when the employee's own physician has declared them fit for duty. Depending on the determination of the City Doctor, the employee may be declared fit for full duty, fit for limited duty or not fit for duty. If the employee is declared fit for limited duty, the employee may be placed on limited duty status and may be given a limited duty assignment if his/her commander determines that there is limited duty work for the employee to do.

The CBA shall remain in full force and effect. Further, Article 24 of the CBA shall apply with regard to the implementation of this Agreement, except that:

The failure of the employee to obtain and submit to MPD Human Resources written verification from their personal physician that they are fit for duty within the time period set forth in paragraph 5, above, shall constitute a circumstance in which the Department may require a fitness for duty evaluation under Section 25.2 of the CBA.

Where the City Doctor refers the employee to his/her personal physician for an immediately life-threatening condition and where that condition requires treatment and results in restrictions on the employee's activities for more than one week, such events shall constitute a circumstance in which the Department may require a fitness for duty evaluation under Section 25.2 of the CBA.

The dispute resolution provisions of Section 25.8 of the CBA shall apply to any dispute between the employee's doctor(s) and the City Doctor regarding the employee's fitness for full and unrestricted duty that may arise from the implementation of this Agreement.

The City Doctor shall not disclose to the Department or to any of its personnel (other than the affected employee) any specific information from the Questionnaire or from any subsequent examination of any employee. Notwithstanding the foregoing, the City Doctor may advise the Chief of Police or his/her designee that an employee: is not eligible to wear an APR; has been referred to be evaluated by his/her personal physician within 21 days; or has been referred to be evaluated by his/her personal physician for an immediately life-threatening condition that renders the employee unfit for duty.

THE PARTIES have caused this Letter of Agreement to be executed by their duly authorized representative whose signature appears below.

FOR THE CITY OF MINNEAPOLIS:

Tim Dolan Date
Chief of Police

Timothy O. Giles Date
Director, Employee Services

FOR THE FEDERATION:

John Delmonico Date
President, Police Federation

James P. Michels Date
Attorney for Police Federation

ATTACHMENT "B"

THE CITY OF MINNEAPOLIS

and

THE POLICE OFFICERS' FEDERATION OF MINNEAPOLIS

MEMORANDUM OF UNDERSTANDING CONTRACT RELATED MATTERS "TO DO"

This Memorandum of Understanding is made and entered into this 17th day of July, 2006, by and between the City of Minneapolis (the "Employer") and the Police Officer's Federation of Minneapolis (the "Federation) to be included as part of the collective bargaining agreement between the Employer and the Federation for the period from January 1, 2009 to December 31, 2011. (the "Labor Agreement").

During the negotiations of the Labor Agreement, the parties agreed that they would undertake the following tasks and/or continue to meet and confer on the following issues in a timely manner. The parties further agree that, unless the parties enter into a written agreement signed by both of them which modifies or clarifies the Labor Agreement, the parties shall continue to be bound by the expressed terms and conditions of the Labor Agreement with regard to such issues.

The tasks to be undertaken and the issues about which the parties shall continue to meet and confer are:

Issue #28 - Attorney Panel

Federation and City Attorney to meet regarding the following matters relating to Article 26 of the Labor Agreement:

- Review attorneys on approved panel; and
- Discuss attorney hourly rates

Issue #34 – VEBA/HCSA

City and Union to confirm with special legal counsel that $25 bi-weekly contribution currently made to the MSRS Health Care Savings Plan may be contributed to the VEBA instead. If permissibility is confirmed, parties will execute necessary documentation to make such change.

Issue #35 - Subpoenas and Court Notices

Federation and City Attorney will meet to develop a uniform process for accepting service of court notices and subpoenas served on officers in the course and scope of employment and develop guidelines for communications among prosecutors, court personnel and police officers.

Issue #12 – Lateral Entry

The City and Union will meet to review the expired agreement regarding the hiring process for lateral candidates and determine which if any portions should be renewed.

FOR THE CITY:

Timothy O. Giles Date
Director, Employee Services

Tim Dolan Date
Chief of Police

FOR THE FEDERATION:

John Delmonico Date
President, POFM

James P. Michels Date
Attorney for POFM

ATTACHMENT "C"

CITY OF MINNEAPOLIS

And

THE POLICE OFFICERS' FEDERATION OF MINNEAPOLIS (POLICE UNIT)

LETTER OF AGREEMENT
Health Care Insurance

WHEREAS, the City of Minneapolis (hereinafter "Employer") and the Police Officers Federation Of Minneapolis, Police Unit, (hereinafter "Union") are parties to a Collective Bargaining Agreement that is currently in force; and

WHEREAS, the Parties desire to provide quality health care at an affordable cost for the protection of employees, which requires a modification to the current Collective Bargaining Agreement as it relates to the funding of Health Care beginning in 2009; and

NOW, THEREFORE BE IT RESOLVED, that the parties agree as follows for the period January 1, 2009 through December 31, 2009:

1. The City will offer four (3) medical plans (two managed care models and one open access model) through Medica Insurance Company ("Medica") during the term of this agreement unless the parties mutually agree to the contrary.

2. For the period January 1, 2009 through December 31, 2009, the City will pay $349.66 per month toward the premium cost of single coverage and $1219.36 per month toward the premium cost of family coverage for Plans 1 and 2.. The employee will pay the additional monthly premium costs associated with the selected plan through pre-tax payroll deductions.

3. For the period January 1, 2009 through December 31, 2009, the City will pay $329.66 per month toward the premium cost of single coverage and $1139.36 per month toward the premium cost of family coverage for Plan 4 – Medica Choice. The employee will pay the additional monthly premium cost through pre-tax payroll deductions.

4. The City will continue the Health Reimbursement Arrangement ("the Plan"), which was established January 1, 2004 to provide reimbursement of eligible health expenses for participating employees, their spouse and other eligible dependents; and the Voluntary Employees' Beneficiary Association Trust (the "Trust") through which the Plan is funded.

5. The Plan shall be administered by the City or, at the City's discretion, a third party administrator.

6. The City shall designate a Trustee for the Trust. Such Trustee shall be authorized to hold and invest assets of the Trust and to make payments on instructions from the City or, at the City's discretion, from a third party administrator in accordance with the conditions contained in the Plan. Representatives of the City and up to three representatives selected by the Minneapolis Board of Business Agents shall constitute the VEBA Investment Committee which shall meet not less than quarterly to review the assets and investment options for the Trust.

7. The City shall pay administration fees and other expenses pursuant to the terms of the Plan and Trust.

8. The City shall make a contribution to the Plan in the annual amount designated below for each participant who has elected to be enrolled in the respective plan. Such City contribution shall be made in monthly installments equal to one-twelfth of the designated amount and shall be considered to be contract value in the designated amount.

Plan Name	Single	Family
Plan 1 – Medica Elect/Essential	$740.04	$1170.00
Plan 2 – Medica Elect/Essential	$600.00	$900.00
Plan 4 – Medica Choice	$1080.00	$2280.00

In the event of a forfeiture required pursuant to Section 5.5(b) of the Plan, following the death of a member who has no surviving spouse or qualified dependents, the amount forfeited will be divided evenly among the Plan accounts of members of the bargaining unit to which the deceased member last belonged. The amount to be forfeited will be calculated as of the date claims for reimbursement by the member or his/her estate are no longer timely pursuant to terms of the Plan. For purposes of eligibility to receive such forfeited amount, bargaining unit membership will be determined on the date such forfeiture is distributed.

9. Future employee contributions for medical plan coverage and/or Plan contribution amounts for 2010 and beyond shall be determined by the Benefits Sub-committee of the Citywide Labor Management Committee; however, the City shall bear 82.5% of any generalized medical premium rate increase and the employees shall bear 17.5% of any generalized medical premium rate increase, as determined by the medical plan carrier.

10. The Parties agree that, except for the City contributions to the Plan or other negotiated payments to a tax-qualified health savings account, incentives, discounts or special payments provided to medical plan members that are not made to reimburse the member or his/her health care provider for health care services covered under the medical plan (e.g. incentives to use health club memberships or take health risk assessments) are not benefits for the purposes of calculating aggregate value of benefits pursuant to Minn. Stat. § 471.6161, Subd. 5.

11. The unions shall continue to be involved with the selection of and negotiations with the medical plan carrier.

12. This agreement does not provide the unions with veto power over the City's decisions.

13. This agreement does not negate the City's obligation to negotiate with the unions as described by Minn. Stat. § 471.6161, Subd. 5.

14. The terms of this agreement shall be incorporated into the Collective Bargaining Agreement as appropriate without additional negotiations.

THE PARTIES have caused this Letter of Agreement to be executed by their duly authorized representative whose signature appears below.

FOR THE CITY OF MINNEAPOLIS: **FOR THE UNION:**

_____/S/_____ _____/S/_____
Timothy O. Giles Date John Delmonico Date
Director, Employee Services President, MPOF

ATTACHMENT "D"

THE CITY OF MINNEAPOLIS

and

POLICE OFFICERS FEDERATION OF MINNEAPOLIS

INTERPRETATION OF SECTION 7.5 OF THE LABOR AGREEMENT (SHIFT DIFFERENTIAL)

RECITALS

A. The City of Minneapolis (hereinafter "Employer") and the Police Officers Federation of Minneapolis (hereinafter "Federation") are parties to a Collective Bargaining Agreement (hereinafter "Labor Agreement") that is currently in effect.

B. Section 7.5 of the Labor Agreement provides for the payment of a shift differential payable to employees who "work a scheduled shift in which a majority of the work hours fall between the hours of 6:00 p.m. and 6:00 a.m." Section 7.5 further provides that the shift differential shall be paid "for all hours worked on such shifts."

C. A dispute arose as to whether officers who do not normally work a shift qualifying for the differential do work a scheduled shift for which a majority of the hours fall between 6:00 p.m. and 6:00 a.m. This situation occasionally occurs when a day watch officer volunteers to work a night watch shift to cover shift minimums due to the absence (by sick leave or comp time usages) of a member of the night watch.

D. After discussing the issue during a Labor Management Committee meeting, the parties mutually agreed to resolve issues regarding the interpretation of Section 7.5 on the following terms without further cost to either party.

NOW THEREFORE, the parties hereby agree as follows:

AGREEMENT

1. The intent of Section 7.5 of the Labor Agreement is that the eligibility to receive the shift differential is determined by the status of the shift rather than the employee; except with regard to an employee who is assigned to a qualifying nighttime Bid Assignment, as defined by Section 9.1(c) of the Labor Agreement, and who is involuntarily assigned to work daytime hours.

2. Consistent with the intent expressed in Paragraph 1, above, the shift differential should be paid when an employee works "a scheduled shift" that qualifies for the differential regardless of whether the "scheduled shift" is that employee's regular shift and regardless of whether the employee volunteered to work such "scheduled shift."

3. Buy back hours worked pursuant to Section 10.6(c) of the Labor Agreement are not a "scheduled shift" and, therefore, do not qualify for shift differential regardless of the time of day the buy back is worked and regardless of whether the buy back is worked by an employee who is assigned to a nighttime Bid Assignment.

4. The shift differential is not payable when an employee officer who is assigned to a nighttime Bid Assignment voluntarily agrees to work a "scheduled shift" for which a majority of the hours *do not* fall between 6:00 p.m. and 6:00 a.m.

5. The Employer will conduct an audit of payroll records for the period from June 1, 2008, through the implementation date of this Agreement for the purpose of identifying hours worked that should have qualified for the payment of shift differential as determined under the Labor Agreement, and the interpretation thereof as set forth herein, but for which the shift differential was not paid to the employee who worked such hours. Following the conclusion of the audit, the Employer will present the audit findings to the Federation not less than two weeks prior to the proposed date for implementing any back pay to allow the Federation an opportunity to raise questions or concerns regarding the audit. The audit shall be deemed final following the

conclusion of the comment period. Back pay shall be paid to affected employees pursuant to the final audit as soon as is practical.

6. The Federation waives any grievances that may have arisen prior to the date hereof on the facts and issues addressed herein.

7. The Labor Agreement remains in full force and effect.

FOR THE CITY OF MINNEAPOLIS:

_____/S/_____
Tim Dolan Date
Chief of Police

_____/S/_____
Timothy Giles Date
Director, Employee Services

FOR THE FEDERATION:

_____/S/_____
John C. Delmonico Date
President, Police Federation

_____/S/_____
Jim Michels Date
Attorney for POFM

ATTACHMENT "E"

THE CITY OF MINNEAPOLIS

and

POLICE OFFICERS FEDERATION OF MINNEAPOLIS

MEMORANDUM OF AGREEMENT AND UNDERSTANDING

REGARDING

STANDBY STATUS FOR SPECIALIZED INVESTIGATORS

RECITALS

A. WHEREAS, the City of Minneapolis (hereinafter "Employer") and the Police Officers Federation of Minneapolis (hereinafter "Federation") are parties to a Collective Bargaining Agreement (hereinafter "Labor Agreement") that is currently in force, and

B. WHEREAS, even though the Minneapolis Police Department (the "Department") staffs the Homicide Unit 24 hours per day, seven days per week, there is frequently the need for additional investigators during the night and on weekends; and

C. WHEREAS, the prior practice (prior to December, 2004) of calling in off-duty personnel was not always effective, did not equitably distribute the burden of intrusions into an employee's off-duty time, and resulted in much confusion and misunderstanding as to the expectations with regard to an employee's obligations and ability to decline a call-in; and

D. WHEREAS, in December, 2004, the Department implemented a new practice in which investigators in the Homicide Unit were told that they were "on standby," that they were expected to report for duty if called, and that they would be subject to discipline if they did not respond; and

E. WHEREAS, the Labor Agreement contains a provision regarding compensation for standby status; and

F. WHEREAS, the Department did not compensate the members of the Homicide Unit Federation for standby in accordance with the terms of the Labor Agreement; and

G. WHEREAS, the Federation filed a grievance over the compensation for standby; and

H. WHEREAS, the grievance has now been settled; and

I. WHEREAS, one element of consideration in settlement of the grievance was to establish reasonable compensation and conditions for standby status for investigators with specialized skills;

NOW THEREFORE, the parties hereby agree as follows:

AGREEMENT

1. Notwithstanding the plain language of Section 10.4 of the Labor Agreement to the contrary, the terms and conditions for standby status for Sergeants assigned to the Homicide Unit (the "Employees") shall be governed by the terms of this Agreement.

2. Employees may occasionally receive calls during their off duty hours to assist in resolving issues may arise. It is expected that, when available, employees will respond and for such response will be compensated pursuant to Section 10.3 of the Labor Agreement. However, an employee who does not or is unable to respond during his/her off-duty time will not be subject to discipline for such lack of response unless he/she is "standby."

3. The term "standby" is limited to a status in which an employee, though off duty, is required by the Employer to refrain from the use of alcohol, be accessible and be fully prepared to report to the Homicide Office (Room 108) within sixty (60) minutes. The employee will receive clear and written advance notice that will specify the date and hours that he/she is to be on standby.

4. The Employer may assign employees to be on call under this Agreement for the limited purpose of providing assistance to on-duty investigators with regard to the investigation of homicides, kidnappings, officer involved shootings, or other serious crimes which necessitate immediate action by investigators with specialized skills. The duration of a standby assignment shall be not more than seven (7) consecutive days without the consent of the Employee and the Federation. The Employer will schedule standby assignments first by seeking volunteers and then by using an equitable rotation system. The scheduling of employees for standby should be of a reasonable duration and frequency, thus respecting the employee's personal life.

5. An employee may fulfill his/her obligation to serve a scheduled standby shift by finding a replacement to serve on standby. If an employee elects to fill his/her shift with a replacement, the employee originally scheduled to serve on standby shall give the Homicide Lieutenant advance written notice of the replacement. An employee shall be excused from a scheduled standby shift if he/she is on a pre-approved vacation or is sick.

6. An employee who is scheduled to be on standby shall be compensated with fifteen (15) minutes at his/her regular straight time rate (including longevity and any other applicable premium or differential) for each hour or part thereof that he/she is on standby if not called in to work. If called in to work, the employee will not receive the standby compensation for the time spent working, but will be compensated for such hours worked according to the call-in provisions of Section 10.3 of the Labor Agreement. An employee who is scheduled to be on standby on any of the holidays designated in Section 13.1 of the Labor Agreement shall be compensated with twenty (20) minutes at his/her regular holiday rate, as determined under Section 10.7 of Labor Agreement (although not restricted to the five holidays specified in Section 10.7), for each hour or part thereof that he/she is on standby.

7. An employee on standby is required to respond to telephone calls of up to an aggregate time of thirty (30) minutes during the standby period without additional compensation. If the employee is required to spend more than thirty (30) minutes on the telephone, the aggregate telephone time will be treated as a call-in.

8. In order to expedite the response time of an employee who is called in to work, he/she shall be provided with the use of a fully-equipped squad car while on standby. If called in, the employee shall sign on by radio upon departing for work and shall be compensated as working from the time of sign on until relieved of duty by a supervisor. Because an employee is not restricted from conducting personal business while on standby so long as he/she remains able to timely report to Room 108, reasonable personal use of the vehicle shall be allowed while on standby.

9. This Agreement does not apply to any employee of the Department other than Sergeants assigned to the Department's Homicide Unit.

10. This Agreement does not apply to court standby for employees of the Department's Homicide Unit or to any type of standby for such employees, other than the limited scope of investigative standby specified in paragraph 4, above.

11. The Labor Agreement remains in full force and effect, except as expressly modified by this Memorandum.

12. The Employer acknowledges and agrees that the terms of this Agreement constitute a reduction from the standby compensation payable under Section 10.4 of the Labor Agreement and, therefore, does not constitute an increase in the compensation payable to members of the Federation. Accordingly, the Employer agrees that it will not and shall not assert in any forum that the existence or terms of this Agreement create a

new or additional element of compensation payable to Federation members that should count against the Employer's "salary cap" unilaterally imposed in January, 2003, or against the aggregate economic value of any successor agreement to the Labor Agreement.

FOR THE CITY OF MINNEAPOLIS:

_____/S/_____
Timothy O. Giles Date
Director, Employer/Employee Relations

_____/S/_____
William McManus Date
Chief of Police

FOR THE FEDERATION:

/S/_____
John C. Delmonico Date
President, Police Federation

/S/_____
James P. Michels Date
Attorney for Police Federation

EXHIBIT

156

	A	B	C
1	#	Request	Person
2	1	Provide a copy of each internal version for all MPD policy and procedure manual policies and administrative/special orders, special directives, and supplemental order/directives from January 1, 2010 through November 6, 2020 that are not maintained on public dashboards. If the order is/was rescinded provide dates when the order was effective.	Dan Boody
3	2	Provide a report from the Practice Manager, Cognos, and Tableau systems used to track all OPCR complaints, investigations, and determinations completed from January 1, 2012 through the present. The report/spreadsheet should contain the race and gender of the complainant (if known), information about the police officer (race, gender, whether other complaints have been made about the officer and the results of those complaints), date of complaint, date(s) of investigation, date of discipline, and any other dates or information maintained in the fields of Practice Manager.	Terry Honkomp Rick Paulsen
4	3	Provide all documents reflecting records retention policies for the CRA and OPCR	CAO
5	4	Provide records of discipline issued to sworn personnel of any rank from January 1, 2010 through June 2, 2020. a. Identify officer name, rank at the time of the violation, race, sex/gender, policy violated, violation date, date discipline including coaching was provided, what discipline was issued, which office completed the investigation if any, and follow up provided to the officer for correction. Also provide final discipline disposition if there was an arbitration hearing. b. Under MDHR's understanding, these records were produced to a reporter pursuant to a Data Practice Act request and therefore should not be unduly burdensome to produce in this case.	CAO
6	5	All documents that refer or relate to any efforts to implement the recommendations of the January 2015 "Diagnostic Analysis of the Minneapolis Police Department, MN" by the U.S. Department of Justice's, Office of Justice Programs.	Chief Arradondo Commander Glampe Commander Granger
7	6	All documents that identify, refer, or relate to all recommendations or suggestions made by any experts, including but not limited to the U.S. Department of Justice, state government departments and agencies, non-profit and consulting firms regarding the evaluation, audit, or reform of the Internal Affairs Unit since January 2010.	Deputy Chief Halvorson Commander Glampe Commander Granger Commander Wheeler
8	7	All documents, including communication, that show the rationale, reason(s), or explanation(s) as to why all recommendations or suggestions from experts identified in response to Request 6 were or were not incorporated by the Internal Affairs Unit.	CAO
9	8	All documents that identify, refer, or relate to all recommendations or suggestions made by any experts, including but not limited to the U.S. Department of Justice, state government departments and agencies, non-profit and consulting firms regarding the evaluation, audit, or reform of the OPCR and/or the City's civilian oversight process and structure since January 2010. If a document responsive to this request has already been provided to MDHR under a prior information request, identify the document by bates number(s).	Director Jaafar Commander Glampe

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10	9	All documents, including communication, that show the rationale, reason(s), or explanation(s) as to why all recommendations or suggestions from experts identified in response to Request 8 were or were not incorporated by OPCR.	CAO
11	10	Minneapolis Civil Rights Department's annual budgets for each fiscal year from January 1, 2010 through the present.	Finance - Budget
12	11	Office of Police Conduct Review's annual budgets for each fiscal year from January 1, 2012 through the present.	Finance - Budget
13	12	Minneapolis Police Department's detailed budgets from January 1, 2010 through the present.	Finance - Budget
14	13	Provide documents identifying a list of all applicants eligible for promotion into sworn positions within the MPD from January 1, 2010 to the present. The documents should include information about each applicant's race and sex/gender, the position for which the applicant applied, the candidate's rank, assignment at time of application, the candidate's tenure in the MPD at the time of application, the hiring/promotion event at issue, the date of the promotion decision, materials used during promotional process including but not limited to: scenarios, tests, interview questions, interview panelists, and other materials relied upon during the promotional process, whether the candidate was selected, the individuals involved in making the promotion decision, the reason for the selection or non-selection.	Deputy Chief Halvorson Sarah Almquist
15	14	All policies and procedures concerning the recruitment, hiring, and promotion of sworn and unsworn MPD employees from January 1, 2010 to the present.	Deputy Chief Halvorson Sarah Almquist
16	15	All policies and procedures related to background investigation for the positions of either community service officers or patrol officers including lateral hires from January 1, 2010 to the present.	Deputy Chief Halvorson
17	16	Provide all criteria taken into consideration during the background check screening process for a new officer including community service, patrol, and lateral hires. Identify what factors, information, or other evidence that would constitute an unacceptable/unsatisfactory background investigation. Provide the names of all third parties used as consultants relied upon to prepare, conduct, or evaluate information obtained during this background check screening process and explain how they are relied upon. To the extent this process changed during the between January 1, 2010 and the present, describe the nature and reason for all the changes.	Deputy Chief Halvorson Sarah Almquist
18	17	For the time frame of January 1, 2010 to the present, provide criteria and selection process for sworn personnel who conduct background investigations.	Deputy Chief Halvorson Sarah Almquist
19	18	Identify and describe the role of human resources in the selection of new hires for community service officers, patrol officers, and lateral hires.	Deputy Chief Halvorson Sarah Almquist
20	19	Provide all policies and procedures that refer or relate in any way to "legacy" hires or nepotism from January 1, 2010 to the present.	Deputy Chief Halvorson Sarah Almquist

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21	20	Provide all policies and procedures that refer or relate to the process of "detailing" a sergeant, lieutenant, or any other sworn position from January 1, 2010 to the present. Provide a list of all MPD officers who have been selected for "detail" assignments from January 1, 2010 to the present. For each officer identified, provide their name, race, sex/gender, and if they were selected for permanent promotion into the role of a sergeant or lieutenant.	Deputy Chief Halvorson Sarah Almquist
22	21	All documents related to or referring to MPD's proposed or implemented plans for hiring, recruitment, and promotion for the next 10 years.	Deputy Chief Halvorson Sarah Almquist
23	22	All affirmative action policies, hiring goals, and diversity recruitment materials prepared by/for respondent and disseminated by the City, MPD, and/or a vendor from January 1, 2010 to the present.	Deputy Chief Halvorson Sarah Almquist
24	23	All documents that identify all policies and procedures related to the MPD's merit promotion process, including documents related to any succession programs, development plan for key leadership roles, review boards, interview panels, examinations, education, and training materials from January 1, 2010 to the present.	Commander Case Commander Blackwell
25	24	All policies, procedures, and communications from January 1, 2010 to the present, related to the MPD's process for identifying which individuals are selected to join and/or lead specialty units, including performance metrics, review board and interview panel process, examinations, and other performance standards.	Assistant Chief Kjos Deputy Chief Halvorson
26	25	All policies, procedures, forms, and plans related to MPD's performance evaluation systems and metrics for sworn officers at any rank from January 1, 2010 to the present. To the extent that this system has changed or been modified during this time period, provide the dates, nature, and reason for each change or modification.	Sarah Almquist
27	26	Produce all documents maintained or in possession of the Minneapolis City Attorney's Office that includes information identifying all officers employed by the Minneapolis Police Department that the City Attorney's Office will not call to testify because of concerns for the officer's honesty or trustworthiness, or has a confirmed record of knowingly lying or being dishonest in an official capacity. This document is colloquially referred to as the "Brady list."	CAO
28	27	All policy, procedure, and training documents created or in existence at any time from January 1, 2010 to the present, related to the City Attorney's Office maintaining, retaining, obtaining, disclosing Brady data, including impeachment evidence about police officers (discipline files, etc.)	CAO
29	28	All policy, procedure, and training documents from the City Attorney's Office related to prosecuting misdemeanors for the timeframe of January 1, 2010 to the present.	CAO
30	29	All policy, procedure, and training documents from the City Attorney's Office related to working with the city's police department for the timeframe of January 1, 2010 to the present.	CAO

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31	30	Provide a list of all cases that the City Attorney's Office has pursued or declined to pursue for obstruction of legal process charges (with or without force) and/or disorderly conduct charges from January 1, 2010 to the present. For each case identified, provide the disposition of the case, and the race and gender of the defendant. (The list should include cases the Office has pursued or declined to pursue for solely obstruction charges, solely disorderly conduct charges, and cases in which disorderly conduct and obstruction charges were cited by the MPD.)	CAO
32	31	Training materials used by the City Attorney's Office between January 1, 2010 to the present regarding training attorneys working on petty misdemeanors, misdemeanors, gross misdemeanors, and written authority on any potential plea offers.	CAO
33	32	Provide process, policies, documents, and programs for referring a case to another program in lieu of prosecution for the timeframe of January 1, 2010 to the present.	CAO
34	33	Data from January 1, 2010 to the present on all traffic collisions, related property damage, serious injuries, and fatalities, and locations of those collisions in the City of Minneapolis, determined cause of collision, and if impairing driving was identified and charged, from January 1, 2010 to the present.	Deputy Chief Fors
35	34	Documentation, including any training materials, from January 1, 2010 to the present demonstrating how, if at all, the MPD utilizes the race information in the CLEAR form which is used to document the race of an individual who is stopped by the MPD.	Commander Blackwell Commander Case Lieutenant Rugel
36	35	Spreadsheet identifying the grant or denial of any and all "no knock" warrants issued between January 1, 2010 to the present. Data set should include: a. Race and sex/gender of individual who is subject of the no knock warrant; b. Location of the warrant's execution; c. Date subject property had the no knock warrant executed; d. Provide the basis, purpose, and evidence the officer believes will be found from the search; e. Any charges stemming from evidence found as a result of the search; f. Any complaints regarding the no knock warrant internal or external (provide communications, complaint forms, complaint communications, investigation, and final disposition); g. Names of officers involved in investigation of property; h. Names of officers involved in execution of the no knock warrant; i. Any incident reports or supplements attached to the no knock warrant; j. Any no knock warrants rejected by a judge and rationale for rejection; and k. Final prosecution disposition	Deputy Chief Waite
37	36	Provide any corresponding policies, training, or guidance for the time period of January 1, 2010 to the present regarding "no knock" warrants.	Deputy Chief Waite
38	37	The date upon which the MPD traffic unit was decreased in size, and any related documentation that refers or relates to this change.	Deputy Chief Fors

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39	38	The number of officers assigned to the MPD traffic unit throughout January 1, 2010 to the present.	Dan Boody
40	39	Provide names, race, sex/gender, and rank of all individuals int eh MPD's Gang Task Force Unit or any units created under similar names such as Gun Violence, Violent Crimes, or any other related units within MPD from January 1, 2010 to the present. For each unit provide dates the units existed and if it no longer exists, rationale for dissolving the unit the guiding policies outlining the responsibilities, and mission of the individual unit.	Assistant Chief Kjos Deputy Chief Fors Deputy Chief Waite Deputy Chief Halvorson
41	40	Provide names, race, sex/gender, and rank of all individuals in the MPD training unit from January 1, 2010 to the present.	Sarah Almquist
42	41	Provide any audit, written change in policy, and directives of the field training officer (FTO) program from January 1, 2010 to the present.	Commander Blackwell
43	42	Provide copies of all FTO weekly observation reports from July 27, 2020 through August 10, 2020. If any officer who was in training during this time period was released from employment at any point during the FTO period, provide all feedback from all FTOs for that trainee, provide documentation of weekly observation reports, and any information relied upon including unredacted internal emails to and from any FTO to supervisor regarding the officer in training, including but not limited to: sergeants, lieutenants, commanders, investigators, inspectors, assistant chief, deputy chief, and the chief of police or any combination of those individuals regarding the trainee's performance, progress, deficiencies, concerns regarding certification, and need to be released from employment	Commander Blackwell Lieutenant Fischer
44	43	Provide all documents from January 1, 2010 to the present that outline or describe the process to not certify an officer's employment.	CAO
45	44	Body worn camera footage, radio transmissions, and any investigative materials related to the use of force used by Derek Chauvin on (1) a 14-year-old boy in 2017, CCN-MP-17-337738, (2) Leslie Worthington in 2012, CAPRS CCN #12-359437, and (3) Sami Sanchez in 2010, IAU 10-172.	Commander Wheeler
46	45	All documents that outline the purpose, intent, values, and goals of the IA and its relationship with OPCR.	Commander Glampe Commander Case Commander Granger Commander Wheeler
47	46	All changes, if any, to the IA's purpose, intent, values, and goals since January 1, 2010 through the present.	Deputy Chief Halvorson Commander Glampe Commander Case Commander Granger Commander Wheeler
48	47	All documents that identify the intent of the changes made to the city's civilian oversight model (from the Civilian Review Authority to the OPCR) with respect to how the shift in civilian oversight would impact the working relationship between the OPCR and IA.	Director Jaafar Commander Wheeler

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49	48	All policies and procedures, either formal or informal, utilized by respondent from January 1, 2010 to the present that show the referral process from IA to the Minneapolis Civil Rights Department and from the Minneapolis Civil Rights Department to IA for filing complaints	Deputy Chief Halvorson Commander Glampe Commander Case Commander Granger Commander Wheeler Director Reed
50	49	All documents that refer, relate, or demonstrate how the IA tracks race-based complaints. All documents, logs, or spreadsheets maintained by respondent from January 1, 2010 to the present reflecting individual potential complainants that contact the IA, and whether that contact resulted in a complaint that the IA investigated, and the result of that investigation. Identify each database that maintains this information.	Deputy Chief Halvorson Commander Glampe Commander Case Commander Granger Commander Wheeler
51	50	All documents that show how, if at all, the IA tracks the race of complainants and the race of the identified officer(s) that the complainant identified.	Deputy Chief Halvorson Commander Glampe Commander Case Commander Granger Commander Wheeler
52	51	All documentation to show how, if at all, the IA tracks past policy violations of officers.	Deputy Chief Halvorson Commander Glampe Commander Case Commander Granger Commander Wheeler
53	52	All documentation related to the IA's participation in the development, utilization, and implementation of the policy related to police officer coaching.	Deputy Chief Halvorson Commander Glampe Commander Case Commander Granger Commander Wheeler
54	53	All IA and/or MPD policies, procedures, standards, flow-charts, decision-making guides, info sheets, checklists, matrices, tools, guidance or other documents available to IA staff to understand and/or determine what policy, if any, is implicated or sufficiently raised in a complaint from a member of the public or internal party, or sworn personnel, and to determine if a policy violation occurred.	Deputy Chief Halvorson Commander Glampe Commander Case Commander Granger Commander Wheeler
55	54	If not already provided in response to the request immediately above, all documents, training manuals, or guidance on how the IA determines that the Impartial Policing Policy has been implicated or sufficiently raised in a civilian complaint, or by an internal party or sworn personnel, and whether the Impartial Policing Policy was violated in a particular case.	Deputy Chief Halvorson Commander Glampe Commander Case Commander Granger Commander Wheeler
56	55	All documents that refer to or show guidance provided to IA staff on how to investigate complaints involving race discrimination or racial profiling, and MPD policies that may be implicated by complaints of race discrimination or racial profiling, including but not limited to, anti-discrimination and impartial policing policies.	Deputy Chief Halvorson Commander Glampe Commander Case Commander Granger Commander Wheeler

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57	56	All memoranda or process documents that explain key (1) decision points, (2) steps, and (3) factors to consider by IA staff related to complaints of unfair discriminatory practices by MPD officers.	Deputy Chief Halvorson Commander Glampe Commander Case Commander Granger Commander Wheeler
58	57	All IA or MPD policies, procedures, standards, flow-charts, decision-making guides, info sheets, checklists, matrices, tools, guidance or other documents available to IA staff to understand and/or determine whether and when to refer a case to mediation.	Deputy Chief Halvorson Commander Glampe Commander Case Commander Granger Commander Wheeler
59	58	All formal and informal questionnaires or list of questions used by IA staff during initial intake with a potential complaining party. If none exists, provide all documents relied upon, including electronic documents for the public and internal complaining parties to use in their submission to IA.	Deputy Chief Halvorson Commander Glampe Commander Case Commander Granger Commander Wheeler
60	59	Provide all training materials provided to sworn employees participating on IA and OPCR panels from January 1, 2010 to the present.	Deputy Chief Halvorson Commander Glampe Commander Case Commander Granger Commander Wheeler
61	60	IA's body worn camera review policy and any related documentation.	Deputy Chief Halvorson Commander Glampe Commander Case Commander Granger Commander Wheeler
62	61	All internal notes and forms related to body worn camera review conducted by IA investigators.	Deputy Chief Halvorson Commander Glampe Commander Case Commander Granger Commander Wheeler
63	62	Any documents related to the process for selecting IA investigators and commanders.	Deputy Chief Halvorson Sarah Almquist
64	63	List of IA investigators, lieutenants, and commanders from January 1, 2010 to the present, including rank, current employment status, and assignment.	Sarah Almquist
65	64	Provide a spreadsheet identifying all cases referred from IA to the Minneapolis Civil Rights Department and from the Minneapolis Civil Rights Department to IA from January 1, 2010 to the present. For each case, identify the date the case was referred, the referring OPCR and/or IA employee, the reason for the referral, and the disposition of the case at the Minneapolis Civil Rights Department and/or IA.	Director Reed Commander Wheeler

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66	65	Provide complete, un-redacted complaints and investigative files including body worn camera footage, for IA files at MPD from January 1, 2010 to the present with any or all of the following allegations: use of force, racial profiling, harassment, impartial policing, officer misconduct, ethics, and professional code of conduct. Include final disposition, outcome, and discipline issued if any.	CAO
67	66	All documentation available to, or in the possession or access of, the IA, from January 1, 2010 to the present, regarding any race-based policing complaints.	CAO
68	67	All communications (written or electronic) between, sent, or received by employees of Respondent referencing MDHR, the Minnesota Department of Human Rights, a civil rights investigation, pattern or practice investigation for the time frame of June 2, 2020 through the present. (This request does not include communications between the City Attorney's Office and MDHR.).	CAO
69	68	Emails, text messages, MDC messages sent by, received by, or sent between MPD employees from January 1, 2010 to the present with the terms: George Floyd, Jamar Clark, riot, protest, Black Lives Matter, BLM, race, Northside stop(s), Black, defund, abolish, Trump, MAGA, Make America Great Again, Make America White Again, MAWA, Proud Boys, Boogaloo Bois/Boys, 3%, silent majority, tread on me, three percenters, 3%ers, boot lickers, Fuck 12, F12, ACAB, Philando Castille, Nigger, N-word, Nigga, Nig, Sand Nigger, Hoodrat, Spic, Beaner, Wetback, Coon, Orangutan, Baboon, Monkey, Fag, Faggot, Dyke, Code Brown, Ghetto, Gang Banger, Kike, Jew, ANTIFA, bitch, cunt, badge bunny, or backseat counseling session	CAO
70	69	All information that refers or relates to MPD Policy 7-112.01, including: a.All violations of MPD Policy and Procedure identified in audits carried out under MPD Policy 7-112.01 from January 1, 2010 to the present; b.All proposed and implemented discipline for violations of MPD Policy 7-112.01; c.All policies, lists of, or otherwise identified "prohibited words" as defined by MPD Policy 7-112.01; d.All completed Message Review Action forms (MP-8878) completed pursuant to MPD Policy 7-112.01; e.All requests by an investigator or MPD supervisor for "event driven reports" as defined by MPD Policy 7-112.01.	Assistant Chief Kjos Director Hughes
71	70	Radio transmissions of dispatch and any communication to and from responding officers for emotional disturbed persons (EDP)s, unwanted persons, trespass, and loitering calls for service for the time period of July 1-8, 2010 and July 1-8, 2020. Provide all corresponding CAD notes from the July 1-8, 2020 calls and provide all corresponding body camera footage.	Director Hughes CAO

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72	71	From January 1, 2010 to the present, identify each and every complaint made to the Minnesota Board of Peace Officer Standards Board (POST Board) regarding alleged misconduct (as defined by the POST Board) of a sworn MPD officer. For each, identify the officer by name, race, sex/gender, the nature of the complaint, whether the POST Board investigated the complaint, the outcome of the complaint, and all documents that refer or relate to the complaint, investigation and outcome.	Chief Arradondo Deputy Chief Halvorson
73	72	For the time period January 1, 2010 to the present, provide a list of sworn officers who were investigated by respondent's Human Resources Department for alleged violations of the City's Anti-Discrimination, Harassment, and Retaliation Policy. For each, identify the officer by name, race, sex/gender, the nature of the complaint/allegation, the outcome of any investigation, whether the officer was disciplined as a result of the complaint or investigation, the nature of the discipline, and provide all underlying documents relied on during the investigation, including investigative summaries or conclusions.	Sarah Almquist
74	73	For the time period January 1, 2010 to the present, provide a list of sworn officers who were investigated by the respondent's Ethical Practices Board for alleged violations of the City's Ethics Code. For each, identify the officer by name, race, sex/gender, the nature of the complaint/allegation, the outcome of any investigation, whether the officer was disciplined as a result of the investigation, the nature of the discipline, and provide all underlying documents relied on during the investigation, including investigative summaries or conclusions.	CAO