

IN THE MATTER OF ARBITRATION

OPINION & AWARD

-between-

THE MINNEAPOLIS POLICE FEDERATON

Grievance Arbitration

Re: Employee Discipline

-and-

THE CITY of MINNEAPOLIS
MINNEAPOLIS, MINNESOTA

Before: Jay C. Fogelberg
Neutral Arbitrator

Representation-

For the Employer: Trina R. Chernos, Asst. City Attorney

For the Union: Gregg M. Corwin, Attorney
Cristina Parra Herrera, Attorney

Statement of Jurisdiction-

The Collective Bargaining Agreement duly executed by the parties provides, in Article 5, for an appeal to binding arbitration of those disputes that remain unresolved after being processed through the initial two steps of the procedure. A formal complaint was submitted by the Union on behalf of the Grievant on September 27, 2010, and eventually appealed to binding arbitration when the parties were unable to resolve the matter to their satisfaction during discussions at the intermittent steps. The

undersigned was then selected as the Arbitrator to hear evidence and render a decision from a panel of neutrals mutually agreed upon by the parties. A hearing was convened in Minneapolis on April 21, 2011, and continued on June 14, 15 and 22, at which time the parties were afforded the opportunity to present position statements, testimony and supportive documentation. At the conclusion of the proceedings, the parties agreed to submit written summary arguments which were received on July 25, 2011. Thereafter, the hearing was deemed officially closed.

While the parties were unable to agree upon a statement of the issue, the following is believed to constitute a fair description of the questions to be resolved.

The Issues-

1) Is the grievance properly before the Arbitrator for resolution based upon its merits?¹

2) If so, did the Employer have just cause to terminate the employment of the Grievant, Jason Andersen?

3) If not, what shall the appropriate remedy be?

¹ Following the first day of the hearing, the parties briefed the arbitrability issue and on May 3, 2011, I ruled that the Federation's claim that this matter was not arbitrable could not be sustained based upon the evidence, and that consequently the matter would go forward addressing the remaining issues.

Preliminary Statement of the Facts-

The adduced evidence indicates that Jason Andersen was licensed peace officer working for the City of Minneapolis (hereafter "City", "Employer" or "Administration") in their Police Department, at the time of his termination. As such, Mr. Andersen is a member of the Minneapolis Police Officers Federation ("Union," "Federation," or "MPOF") which is the exclusive representative for all sworn law enforcement personnel, except the Chief, Assistant Chief, Deputy Chiefs, and Inspectors, assigned to the Department. Together, the parties have negotiated and executed a Labor Agreement (Joint Ex. 1) covering terms and conditions of employment for the personnel that comprise the bargaining unit.

Mr. Andersen was hired in August of 2005, as a Police Officer and remained in that capacity until he was discharged in December of last year. At that time he was ranked as a patrolman and assigned to the 4th Precinct.

In the summer of 2008, the Grievant was on special assignment as a member of the Metro Gang Strike Force which was comprised of law enforcement personnel from a number of municipalities located throughout the Greater Twin Cities area . On July 25th of that same year he, along with other members of the Force, was detailed to an event in Crystal, Minnesota

called the "Crystal Frolic." When an altercation took place between a youth and another officer from the Crystal Police Department, Mr. Andersen became involved in restraining the youth who had struggled with the Crystal Patrol Officer after he was told to leave the festival. In April of 2009, the City received a citizen's complaint from the youth's mother that Officer Andersen had used excessive force in assisting the Crystal Patrolman to restrain the youth while he was being held on the ground and an attempt was made to place him in handcuffs. More particularly, the complaint alleged that while being restrained, the Grievant approached the youth and kicked him about the body and head (City's Ex. 19). Subsequently, the Employer's Civilian Review Authority ("CRA") undertook an investigation into the matter pursuant to City Ordinance 172.10 in connection with allegations of excessive use of force in connection with the incident. In the course of the inquiry, the Grievant was interviewed on July 29, 2009, which was recorded. At that time Officer Andersen gave what is normally called a "Garrity" statement which requires law enforcement personnel to be truthful at all times during the course of such an investigation. While being questioned by the Employer's appointed investigator, Robin Lolar, the Grievant was asked about the encounter with the arrestee the previous July.

In her written summary report to the CRA, Ms. Lolar concluded that in addition to there being “no doubt” that excessive force was used, she further found that the Grievant was “not believable” when giving answers to questions she posed concerning the incident (City’s Exs. 19). Subsequently, the Authority’s reviewing panel sustained the charge of excessive force, and further concurred with the investigator that Officer Andersen was “....not truthful in his statements” to her and therefore sustained the charge of untruthfulness against him as well (Employer’s Ex 20).²

In September of 2010, the Department’s Professional Standards Bureau sustained the CRA findings and recommendations following Officer Andersen’s Lauderhill hearing regarding the charges that had been made against him. They were then forwarded to the Minneapolis Chief of Police, Tim Dolan, for final action (Employer’s Ex. 10). On September 21, 2010, Chief Dolan reduced the charge of excessive force against the Grievant from the most serious “Category D” to a “C” in connection with the July 2008 incident in Fridley (Employer’s Ex. 11). At the same time however, he

² There was a delay in the process from 2009 to the following year due to an intervening incident involving the Grievant which initially resulted in his termination from the force. However, that action was grieved by the Federation and eventually sustained by an arbitrator who ordered his reinstatement with full back pay and benefits. Thereafter, the CRA’s Board reactivated the investigation regarding the excessive use of force charge in connection with the Fridley incident in July of 2010.

sustained the other charges of untruthfulness in connection with the Garrity interview, and concurred with the IAF findings of untruthfulness and their recommendation for termination (*id.*). Consequently, Andersen was notified the following day of the Administration's decision and his termination effective September 22, 2010.

On September 27, 2010, the Federation filed a formal complaint on behalf of Officer Andersen, alleging "no just cause for discipline" (City's Ex. 13). Eventually, the matter was appealed to binding arbitration when the parties were unable to resolve the matter at the intermittent steps.

Relevant Contractual Provisions & Civil Service Rules -

From the Master Agreement:

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.....

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....

* * *

Article 22
Rules & Regulations

It is understood that the City, through its various Departments, has the right to establish reasonable work rules and regulations...

From the Civil Service Rules:

11.03 Cause for Disciplinary Action

The two primary causes for disciplinary action and removal are substandard performance and misconduct.

* * *

B. Misconduct

The following activities are examples of misconduct, which may be cause for disciplinary action.

* * *

11. Physical abuse, brutality or mental harassment.

* * *

18. Violation of department rules, policies, procedures or City ordinance.

19. Knowingly making a false material statement to the City's representative during an investigation into employment related misconduct.

20. Other justifiable causes.

From the Department's Policy Manual:

All sworn and civilian members of the department shall conduct themselves in a professional and ethical manner at all times and not engage in any on or off-duty conduct that would tarnish or offend the ethical standards of the department...

* * *

2-106 Complaint Investigations- Garrity Decision

MPD employees are required to give a statement when ordered to do so regarding matters pertaining to the scope of their employment and their fitness for duty. These statements or the fruits thereof, compelled as a condition of employment, cannot be then used in any criminal proceedings against the employee, except in cases of alleged perjury by the employee giving the statement (*Garrity v. New Jersey*, 1967, U.S. Supreme Court).

All employees shall answer all questions truthfully and fully render material and relevant statements to a competent authority in an MPD investigation when compelled by a representative of the Employer....

All statements of involved police employees shall be signed and sworn. Any employee found to have intentionally given a false statement shall be subject to MPD disciplinary procedures, up to and including dismissal.

5-101.01 Truthfulness

The integrity of police service is based on truthfulness. Officers shall not willfully or knowingly make an untruthful statement, verbally or written, or knowingly omit pertinent information pertaining to his/her official duty as a Minneapolis Police Officer.

* * *

MPD employees are obligated under this policy to respond fully and truthfully to questions about any action taken that relates to the employee's employment or position regardless of whether such information is requested during a formal investigation or during the daily course of business.

Positions of the Parties-

The **CITY** takes the position in this matter that the termination of Jason Andersen was justifiable under the circumstances. In support, the Administration contends that their investigation into the events was thorough and complete leading to the unmistakable conclusion that Andersen had violated applicable published Department policies when, in July of 2009, he was less than truthful in the course of the interview being conducted by the CRA into the events of July 2008 in Fridley. The evidence shows that although he was well aware of the Garrity requirement for being completely forthright when answering the investigator's questions, he was not; first claiming he could not recall the specifics concerning his use of force when attempting to restrain a youth, and yet being quite definite in his denial of kicking the arrestee in the head or face. His responses to these questions were in direct contrast to the written reports submitted by officers of the Crystal Police Department which were done in close proximity to the date of the incident. Each of those reports were consistent and made by

officers who were near the event and who witnessed the Grievant's conduct first hand. In fact, Andersen's conduct raised a great deal of concern to the point that the Crystal Chief of Police contacted MPD forwarding a copy of the reports. Simply put, according to the Department, the Grievant's answers were not believable. Further, the employer asserts that Andersen was well aware importance to be honest and forthright in the course of the Garrity interview and the legitimate and important need of the Department to be able to count on members of the force to be honest at all times – whether the conduct in question occurred either on or off duty. Moreover, the City argues that the decision to terminate Officer Andersen's employment was consistent with how they have disciplined other officers in the past who have been similarly charged. Finally, they contend that there was no other motivation for their actions, and that the Union's claim that the Administration was predisposed to remove Andersen from the force is nothing more than a "smoke screen." For all these reasons then, they ask that the grievance be denied in its entirety.

Conversely, the **UNION** takes the position that the severe disciplinary action taken by the MPD was not for just cause as required by the parties' Labor Agreement. In support of their position, the Federation maintains that Officer Andersen did not deliberately withhold any information or was

otherwise intentionally vague in the course of his interview with Ms. Lolar in July of 2009. Rather, the amount of time that had transpired between the date of the "event" in question, and the interview by the CRA was in excess of one year, thereby hindering his recollection in connection with the detailed questions that had been posed. At the time of the inquiry, there was a criminal case pending against the Grievant relative to the same incident and, according to the Union, a considerable amount of energy and effort was being expended on that matter. Moreover, it is undisputed that the Grievant had prepared and submitted a written report concerning the events of July 25, 2008, the following day in connection with his involvement in subduing the arrestee in Fridley. Yet, he was unable to obtain a copy of it from the Administration a year later in advance in order to refresh his memory prior to being questioned. The Federation maintains that despite the CRA's refusal to allow him to view the report, he attempted to answer all questions posed to the very best of his ability and did not intentionally misstate any facts during the course of the inquiry. The Union argues that Anderson did not violate any published Civil Service Rule or City policies, and that had the Employer conducted a thorough investigation into the matter, they would have reached the same conclusion. The Union notes that the Grievant has received numerous awards and kudos from the

Department for his job performance; that he had been appointed to the elite Minneapolis Gang Task Force, and; had conducted training for new officers from time to time. The Federation makes the additional observation that Officer Andersen was acquitted of any use of excessive force by a jury in the criminal proceeding concerning the same event, and that in spite of that fact, the Administration proceeded with their own investigation in an effort to make certain that he did not remain on the force. Finally, they contend that the City has demonstrated desperate treatment in their actions to dismiss the Grievant, as other officers charged with untruthfulness have not lost their jobs. For all these reasons then, they ask that the grievance be sustained and that Officer Andersen be returned to his former position and made whole.

Analysis of the Evidence-

In a disciplinary matter such as this, the employer is consistently assigned the initial burden of proof needing to demonstrate that their decision was justified under the circumstances. Normally, management must first establish the accused employee is indeed guilty as charged. Should that be accomplished, they then need to show 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).

While the quantum of proof necessary to meet the employer's initial evidentiary burden may vary depending upon the standard adopted by the reviewing neutral, this writer, as indicated in a number of prior decisions, has endorsed the "clear and convincing" measurement when the accusations involve more egregious behavior. In this instance, the parties' Labor Agreement mandates that an arbitrator not make a decision that is "...contrary to law or public policy" (Joint Ex. 1; Section 4.1). The Employer notes that Ordinance 172.10 for the City of Minneapolis endorses the "preponderance of evidence" standard to be utilized by the Civilian Review Authority in order to sustain a complaint against a police officer. Therefore, both yardsticks have been taken into consideration here in evaluating the evidence that has been tendered.³

While the Grievant's conduct at the "Crystal Frolics" on July 28, 2008 was addressed at the hearing (discussed, *infra*) it is abundantly clear from a review of the record that the pivotal event that ultimately led to his termination, allegedly occurred during the course of providing his "Garrity"

³ The line between the "clear and convincing" and "preponderant evidence" is often blurred when considering the quantum of proof required in a disciplinary dispute. Elkouri & Elkouri, *How Arbitration Works*, BNA 6th Ed.; p. 949, *et seq.*

statement to Ms. Lolar a year later. Distilled to its essence, the Employer argues that Officer Andersen's dismissal was based upon his alleged violation of relevant Department Rules (2-106) and the MPD Code of Ethics (5-101.01, *supra*). The former states: "All employees shall answer all questions truthfully and fully render material and relevant statements to a competent authority in an MPD investigation when compelled by a representative of the Employer..." Similarly, the published Code of Ethics mandates: "MPD employees shall not willfully or knowingly make an untruthful statement or knowingly omit pertinent information in the presence of any supervisor....."

The City has framed the issue as being one of truthfulness; whether the Grievant violated the applicable Department rules and regulations when he was questioned by the CRA investigator in July of 2009. Both Police Chief Dolan and Deputy Chief Gerlicher characterized the rule as perhaps the most important one the Department has. The Chief in particular emphasized the magnitude of a police officer's credibility – both in the ordinary course of performing his/her normal duties and when testifying in court as well. Summarizing at the hearing, he stated succinctly, "...this case is about integrity. I must be able to trust my officers."

In light of the foregoing, the statements given to Ms. Lolar at the initial stage of the IAU's investigation become pivotal. In the Step 4 Review, following the CRA's findings and the Grievant's Lauderhill hearing, Chief Dolan concluded: "I...believe (Andersen) was untruthful when he previously stated under Garrity that he did not remember kicking the arrestee at all. I concur with the recommendation of the (Discipline Panel) to terminate" (City's Ex. 11, p. 4).

The City has relied heavily upon their Exhibit 27 – a transcript of the interview of the Grievant on July 29, 2009 – and the conclusions of the investigator as support for their decision. It demonstrates, according to the Administration, that the officer's memory was "selective." They point to his response to questions put to him by Ms. Lolar concerning what he was wearing on July 25, 2008, which Andersen recalled. He stated that he was in a Gang Strike Force t-shirt, shorts and had tennis shoes on (*id.*, at p. 2). He also remembered what he saw some of the other officers doing that day, and the subject matter of the briefing he and other Gang Strike Force members received from Crystal Police personnel. The Employer further notes that the Grievant stated with certainty that he was not pulled away from the arrestee by another officer, rather was simply given a verbal directive to leave the scene (*id.*, at p. 5). In addition, they point to the fact

that Andersen indicated with assurance that the juvenile was not injured as a result of his actions, and that it was really “a nothing deal” (*id.*, at p. 6).

In Officer Lolar’s written summary and findings, she concluded that the Grievant’s responses to a number of her questions were not “believable” (Employer’s Ex. 19). At the hearing, she explained that in her view, kicking a victim constitutes such an “uncommon event” that Andersen’s answers to her inquire concerning this, i.e. that he could not recall, were simply not credible.

At first, this evidence would appear to be supportive of the City’s decision to terminate Officer Andersen based upon what they deemed to be violations of the Code of Ethics, and Department Rule 2-106. However, a closer examination of the interview with Ms. Lolar and other factors raise significant questions regarding the reasonableness of the action taken by the Administration in this instance.

While the City accurately observes that the Grievant could recall what he wore on the day in question, a review of his interview with Ms. Lolar indicates he remembered that it was “just Gang Strike Force attire.” As a police officer on assignment working with the Gang Strike Force, it is not necessarily unreasonable that he might recall what he had on that day, as it was most common to appear in such attire. Further, he did not state with

certainty that he was wearing a pair of shorts, rather he posited he “*probably* had shorts on” (Employer’s Ex. 27, at p. 2; emphasis added). While he remembered struggling with an individual on that day, Andersen added that he had “no idea” regarding the location of the carnival (*id.*). When asked about assisting the Crystal officer with the struggling juvenile, he indicated: “I don’t really remember exactly what happened.” (*id.*, at p. 3). Questioned about whether there were other Minneapolis officers at the scene from his unit, the Grievant again indicated: “I don’t remember exactly who. It was *too long ago*” (*id.*, emphasis added). Moreover, when specifically asked about kicking the juvenile, he again responded that he could not remember for certain. He was however, confident that he did not kick him in his head or face (*id.*, p. 4).

The investigator delved further into the kicking charge, indicating that she was “just trying to get clarity.” Specifically she inquired as to whether Andersen was “sure you didn’t kick (the arrestee) in his face?” (*id.*, p. 5). To this the Grievant replied: “Um, if I kicked him in his body – *it was so long ago* – I’d need my report to refresh my memory” (*id.*; emphasis added).

It is undisputed that Andersen did not have a copy of the report he authored contemporaneous to the event and forwarded to his immediate supervisor Sergeant Olson. The evidence indicates that he attempted to

obtain a copy of that statement but was unsuccessful.⁴ Prior to giving his statement to Ms. Lolar, the Grievant's Union Representative, Sgt. Jeffrey Jindra, and Officer Andersen requested that he be permitted to review the report along with those submitted by the Crystal officers. That appeal however, was denied by the investigator.

The amount of time that transpired between the event at the Crystal Frolics and the CRA interview with Ms. Lolar has also influenced the decision reached here. I would concur with the Union that the inordinate delay (over a year) may well have prejudiced the Grievant. There is evidence in the record that the investigator did not take Andersen's statement for approximately three-and-one-half months after receiving the complaint from the youth's mother which itself was delayed. Lolar indicated that her conclusions relative to the Grievant's untruthfulness were influenced, to no small extent, by the reports submitted by the Crystal officers who were also present on the day in question. Those reports however, were created within days of the incident. A similar report was sent to Sgt. Olson by Andersen, yet he was not able to consult it before giving his Garrity statement.⁵

⁴ Andersen testified that he attempted by phone to obtain the report from the City's Business Information System but was told that it was "locked" by Deputy Chief Gerlicher and therefore he could not have access to it.

⁵ The evidence indicates that the report itself was not produced until it was subpoenaed by the Federal Grand Jury in connection with the then pending criminal proceedings against Officer

Significantly, the Crystal officers were not interviewed in the same manner as the Grievant was one year later. Accordingly, their memories were not similarly tested. In my judgment, this portion of the investigation demonstrates that something less than a level playing field existed. Under the circumstances, it is not altogether difficult to understand why the Grievant stated repeatedly in his interview with Ms. Lolar that he could not remember with the desired degree of certainty, the extent to which he had (or had not) kicked the individual that was being restrained that day.⁶

Chief Dolan offered, in the course of his testimony, that in his opinion truthfulness includes recalling something you should be able to remember. In this instance however, it has not been adequately demonstrated that the Grievant's failure to recall the specifics of the incident in question represents a deliberate violation of his obligations as a peace officer in Minneapolis.

Department Policy 5-101.1 mandates that members of the MPD, "...shall not *willfully or knowingly make an untruthful statement*, verbally or written, or *knowingly omit pertinent information* pertaining to his/her official duty as a Minneapolis police officer" (*supra*, emphasis added). Similarly,

Andersen (Employer's Ex. 54).

⁶ At the hearing, Lt. Robert Kroll, testifying as a Union witness, noted that at times police officers have experienced difficulties remembering with any degree of desired accuracy, events that occurred as long ago as a year. He recalled not being able to identify a house where he was involved in a shooting when less than a year had transpired.

their manual, in 2-106, states: "...any employee found to have *intentionally* given a false statement shall be subject to MPD disciplinary procedures" (*supra*, emphasis added). The facts entered into the record, when braided together, simply do not adequately support the conclusion reached by the Department that the Grievant was untruthful; at least not to the degree required under the afore-stated evidentiary burden assigned to the Employer in a disciplinary matter such as this.

The Employer also cited the Grievant's statement given to the disciplinary panel chaired by Deputy Chief Gerlicher when Andersen indicated that if given the chance, he would "lay this out from A to Z," and that what he would say would make their "jaw drop" (City's Ex. 9, p. 3). The Administration argues this supports their position as it demonstrates that Andersen knew at the time he gave his Garrity statement, precisely what he did or did not do on July 25, 2008 at the Crystal Frolics.

A careful review of the transcript however, indicates that the Grievant had had the opportunity to review the file in connection with the criminal case pending against him regarding the same incident approximately one week before his Lauderhill hearing. He indicated to the panel that he believed he could not "say anything" regarding the events in question due to the pending trial (*id.*). At the outset of those proceedings, Andersen's

counsel asked the panel if the Grievant could give another Garrity statement as he had just had the opportunity to review CRA file. However, he had still not been able to view his own (contemporaneous) report made to Sgt. Olson. The panel however, denied the request as well as the Union's appeal to delay their findings and recommendation until the criminal trial had been held, which was scheduled for the following month. In light of the clearly inordinate delay which the Grievant had already experienced between the events in the summer of 2008 and his Lauderhill hearing – a period of over two years – it would appear to have been a reasonable a request if it meant full disclosure of all relevant facts.⁷

While the Employer's case against Officer Andersen has fallen short of demonstrating, via the preponderance of the evidence, that his Garrity statement to Investigator Lolar was untruthful, a different result is reached when considering the charge of excessive force. Chief Dolan sustained a "Use of Force" violation after considering the Disciplinary Panel's recommendations, though he reduced the charge to a category "C" which, by departmental guidelines, include suspension or demotion as a consequence (Employer's Exs. 6 & 11). In her report, Ms. Lolar concluded:

⁷ At the hearing, Deputy Chief Gerlicher testified that the Employer had determined that the pending criminal case prevented them from delaying their findings due to potential "Garrity issues."

“Officer Andersen’s kicking the Victim was unwarranted, and this was made apparent by Sgt. Gustafson’s reaction toward Andersen’s tactics” (Employer’s Ex. 19). Todd Gustafson is a lieutenant with the Crystal Police Department with twenty-seven years of law enforcement experience. He testified that he saw the Grievant kick the juvenile while he was on the ground. This witness was the one who intervened between Andersen and the arrestee indicating “I’ve got this guy.” He further stated that the juvenile was not struggling or exhibiting active aggression when he told the Grievant to back away. Chief Dolan also offered uncontroverted testimony that he had reviewed the reports filed by the Crystal officers who witnessed what had transpired that day, and noted that the arrestee received medical attention as a consequence of the incident.

In my judgment, the foregoing evidence supports the findings made by the Administration that Officer Andersen used excessive force in the course of his interaction with the juvenile at the Crystal Frolics in the summer of 2008. The reports filed by members of the Crystal Police Department who were witness to the incident all indicate that they did not believe the arrestee was armed. Nor did any of them feel compelled to kick him as a

means of restraint. Rather they used lesser force to accomplish their objective of handcuffing the suspect.⁸

Award-

Based upon the foregoing analysis of the evidence, I find that the Federation's grievance is to be sustained in part and denied in part. Clearly the City has demonstrated the overriding need for integrity within its Police Department, and particularly the paramount importance for each officer to provide truthful statements whenever called upon. In this instance, however, while they presented testimony and documentation that raised questions concerning Officer Andersen's veracity in connection with his Garrity statement, it is believed to have been less than sufficient to satisfy their evidentiary obligations. The Union's counteracting evidence and arguments are at least equally persuasive. No clear and convincing proof, or preponderant evidence, was tendered to adequately demonstrate that the Grievant knew, or should have been expected to recall, the details of an event that occurred more than a year earlier; particularly without the

⁸ When ruling on the arbitrability issue, I characterized the issue as being one of the Grievant's truthfulness in connection with his Garrity statement, and contemporaneous to that, whether his "off duty" conduct could be used as justification for discipline. However, neither side presented evidence or argument specifically addressing the fact that Officer Andersen, who was assigned to the Gang Strike Force at the time of the incident, was either on or off duty.

opportunity to first review his written report made contemporaneous with the event. More is needed to support the most severe penalty of discharge.

At the same time however, for reasons enumerated above, I find that discipline is warranted for the excessive force used by the Grievant in connection with the incident that occurred on July 25, 2008. Accordingly, Officer Anderson's termination is hereby reduced to a two month suspension without pay and he is to be forthwith returned to his former position and made whole less the suspension ordered here. In this regard, the City's financial obligation shall be offset by any earnings or income the Grievant may have acquired in the interim.

Respectfully submitted this 30th day of August, 2011.

Jay C. Fogelberg, Neutral Arbitrator