

A PROCEEDING IN THE MATTER OF

METROPOLITAN AIRPORTS COMMISSION
Public Employer

and

MN Veterans Preference
Act Decision

JEFFREY D. KEESEY
Employee - Veteran

This Proceeding is held pursuant to the provisions of the Minnesota Veterans Preference Act (VPA), Minn. Stat. §197.46 for the purpose of determining if a proposed termination - discharge of the Employee-Veteran, by the Public Employer, should be sustained, modified or denied.

The tripartite Panel appointed to hear and determine this matter consists of the following individuals:

Frank E. Kapsch, Jr., Panel Chair and Presiding Officer, qualified Rule 114 Neutral and Labor Arbitrator.

Mark W. Gehan, appointed by the Employee-Veteran, Attorney with the firm of Collins, Buckley, Sauntry & Haugh.

Karen N. Wallin, appointed by the Public Employer, Attorney and Labor Relations Representative for Hennepin County.

The Hearing:

Dates: February 25th and 26th, 2015.

Place: At the Minneapolis offices of the Metropolitan Airports Commission.

Post-Hearing Briefs: Both Parties filed timely briefs on March 19, 2015.

APPEARANCES

For the Public Employer:

Joan M. Quade, Attorney
Jennifer Moreau, Attorney
Barna, Guzy & Steffen, Ltd.
200 Coon Rapids Boulevard Suite 200
Minneapolis MN 55433-5894
Tel: (763) 780-8500

For the Employee - Veteran:

Scott A. Higbee, Attorney
Law Enforcement Labor Services, Inc.
327 York Avenue
St. Paul MN 55130
Tel: (651) 793-2317

STIPULATIONS

- The Parties stipulated that the three (3) Members of the Panel have all been properly appointed and/or selected in accordance with the provisions of the Minnesota Veterans Preference Act (VPA), Minn. Stat. §146.97 and are, therefore, empowered to formally hear and determine this matter.
- The Parties identified a set of Joint Exhibits marked A through C, 1 through 8, 9 A-E, 10 and 11 D-G and stipulated to their entry into the Record.
- The Parties stipulated that Metropolitan Airports Commission (MAC) is a political subdivision of the State of Minnesota and is a Public Employer and subject to the provisions of the VPA.
- The Parties stipulated that Jeffrey D. Keeseey is a Veteran, per the definition in the VPA and has honorably served in the military services of the United States for at least 181 consecutive days and is fully qualified as a Veteran per the VPA.
- The Parties stipulated that Jeffrey D. Keeseey, at all times material herein, has been employed by MAC as a MN Licensed Peace Officer - police officer and qualified military veteran.
- The Parties stipulated that Mr. Keeseey has timely and properly invoked his right, per the VPA, to a formal review of his proposed discharge by MAC.

All of the above Stipulations were duly noted, approved and received into the Record.

STATEMENT OF THE ISSUE

The Parties stipulated that the Issue herein is:

"Did the Metropolitan Airports Commission (MAC) act reasonably in discharging the Veteran for misconduct? If not, what shall be the remedy?"

THE PUBLIC EMPLOYER - MAC

The Metropolitan Airports Commission or "MAC" is a public corporation created by the State of Minnesota to own, oversee and manage the Minneapolis-St. Paul International Airport (MSP) and six other General Aviation airports located in and around the Twin Cities metro area. Among its major functions, MAC maintains an Airport Police Department (APD). That department is responsible for the safety and security of all of MAC's airport facilities - particularly MSP - which about 100,000 people pass through every day. The department staff includes more than 70 licensed, sworn police officers, including a Chief of Police and various managerial and supervisory officers, working in functional divisions such as Patrol, Investigations, Narcotics, Security, etc. The goal of APD is to detect and prevent crime, protect life and property and preserve peace, order and safety.

THE EMPLOYEE - VETERAN, JEFFREY D. KEESEY

Mr. Keeseey, as stipulated by the Parties, is a veteran of the military services and is a licensed Minnesota Peace Officer - police officer. Mr. Keeseey commenced employment as a member of MAC's APD in 2001. He served as a Patrol Officer. In 2005, he was promoted to the rank of Sergeant and became a shift supervisor. He has subsequently served in that role to date. At all times material to this matter, Sergeant Keeseey has worked on the Third, Night or "graveyard" Shift from approximately 10 PM to 7 AM, five days per week.

FACT OUTLINE AND SUMMARY

The following is an outline of the salient facts based upon the testimony and evidence presented by the Parties during the course of the hearing. For the most part, the Parties are in agreement with respect to most of the facts, but differ on how certain facts should be interpreted or viewed in the context of the entire situation. The Outline will also cover specific instances where clear-cut and critical credibility issues exist.

The precipitating event in this Matter occurred on July 28, 2014¹. On that date, APD Officer Lora Strauss, employed in the Patrol Division, approached and met with Lt. Jason Erickson, an APD manager at the APD offices.

Officer Strauss is a MN licensed Peace Officer. She commenced employment with APD as a part-time police officer in 2013 and became full-time in 2014. Prior to joining APD, Strauss had been a Special Agent with the Drug Enforcement Administration (DEA), a division of the U. S. Department of Justice, for about 10 years. Ms. Strauss is married to Michael Strauss, a Sergeant employed by the Minneapolis Police Department.

In the meeting with Lt. Erickson, Strauss informed him that she was coming to him to report an incident, involving her Supervisor, Sergeant Jeffery D. Keeseey, on the Night Shift, that occurred on Sunday, July 20. According to Lt. Erickson's notes of the meeting, Officer Strauss stated that at the outset of the Shift, she and Keeseey had a conversation in the Police Operations Center (POC) located in the APD's airport offices. She stated that during the conversation Sgt. Keeseey stated that he would like to have a relationship with her outside of work. Strauss stated that she told Keeseey that was unprofessional and it would never happen, you are my supervisor. She said Sgt, Keeseey apologized and said he got it.

Strauss then proceeded to show Erickson a series of text messages that occurred between her and Sgt. Keeseey, after they both left work at about 7 AM on the morning of July 21.

¹ All subsequent referenced dates are in calendar year 2014, unless otherwise indicated.

Monday, July 21, 0956 AM, from Keesey to Strauss:

"I want to tell you SOMETHING you may or may not want to hear. Call me tonight when you get to TN [Tennessee]. I will talk to you later. I hope you slept a while today."

Monday, July 21, 1050 AM, from Keesey to Strauss:

"I miss you already. Talk to you later."

Monday, July 21, 1101 AM, from Michael Strauss [husband of Lora] to Keesey:

"Would you like to explain the call me tonight because I have SOMETHING to tell you and the I miss you already text to my wife?"

Monday, July 21, 1107 AM, from Michael Strauss to Keesey:

"Well?"

Monday, July 21, 1200 PM (noon), from Lora Strauss to Keesey:

"Jeff, these text messages are inappropriate and are unprofessional. Please do not send them to me anymore. You are my boss, that's all. Thank you."

Monday, July 21, 1953 PM, from Keesey to Michael Strauss:

"I am assuming that this is Strauss' husband. I am sorry about that. That message was not meant for your wife. I accidentally sent it to the wrong person. When I read this message I realized what I did. I just woke up or I would have replied earlier. Sorry."

Monday, July 21, 2032 PM, from Keesey to Lora Strauss:

"I just forward you this message I sent your husband. I did send the message to the wrong person." Keesey did forward a copy of his previous 1953 PM text to Michael Strauss to Lora.

Tuesday, July 22, 2049 PM, from Lora Strauss to Keesey:

"Just so you know my life has been a living hell thanks to your text messages, This is why I told you I don't need any drama and BS in my life. All I want to do is come to work and be left alone. I don't want to be the topic of conversation and gossip. I am so fucking pissed off!"

According to Erickson's memo concerning his July 29th meeting with Officer Strauss, he stated that she feels that Sgt. Keesey understands that she has no interest in becoming involved in a relationship and that this is inappropriate. She stated that she just wanted to bring this issue to my attention and that she does not want it to go any further [emphasis added]. Officer Strauss stated that prior to the incident that occurred on July 20, Sergeant Keesey had not made any inappropriate statements to her.

Erickson further stated that Officer Strauss told him that if Keesey brings the issue up again, she will go to APD's Human Resources section with it. Erickson advised her to let him know if she has further contact with Keesey or if she has additional information to provide. According to his memo, Officer Strauss added that her husband exchanged text messages with Keesey and that she told her husband that she would take care of this issue.

Erickson's memo also contains a note to the effect that he and APD Deputy Chief Shawn Chamberlain returned a phone call to Erickson from Lora Strauss on Thursday, July 31. In the return phone call, Strauss informed them that on Sunday, July 27, her husband had texted Keesey. She said her husband's message was something to the effect that he wanted Keesey to refrain from contacting Lora, his wife. Officer Strauss said that Keesey responded to her husband's text on Tuesday, July 29 with a simple, "Yeah."

According to a file note from Deputy Chief Chamberlain, at some point later on July 31 he received, from Michael Strauss, a copy of a text exchange between M. Strauss and Sgt. Keesey that occurred on July 28:

Monday, July 28, 2157 PM, text from Michael Strauss to Keesey:

"Apparently you are not tracking, quit texting, calling and harassing my wife, she told you to leave her alone, shes not interested in your drama, listen to her or your going to have to deal with me. Are we clear?"

Tuesday, July 29, 0957 AM, text from Keesey to Michael Strauss:

"Yes."

Apparently Mr. Strauss' texts to Keesey, as above, were prompted by these texts earlier on Monday evening, July 28, between Sgt. Keesey and Lora Strauss:

Monday, July 28, 2112 PM, text from Keesey to Lora Strauss:

"You around?"

Immediate text reply from Lora Strauss: "I'm at work."

About a week later, on August 7, at 0600 AM, Deputy Chief Chamberlain and Lieutenant Justin Malone, an APD manger/supervisor called Sgt. Keesey into a meeting at the APD offices. Chamberlain informed Keesey that he and Malone were doing an investigation into a situation brought to them by Officer Strauss and to determine if the matter warranted a formal Internal Affairs (IA) investigation.² Chamberlain informed Keesey of the Garrity Rule³ to the effect

² Chamberlain testified, in the hearing, that Sgt. Keesey was offered the opportunity to have a union representative present during the interview, but he declined the offer. Keesey didn't challenge that statement.

³ A rule or warning issued by public employers to employees being interviewed in the context of an internal or administrative investigation. Employees can be compelled to truthfully answer

that Keesey was expected to answer any questions put him in a truthful manner. Chamberlain added that being untruthful could result in discipline, to include termination. Keesey acknowledged that he understood the warning.

Chamberlain commenced the interview by asking Keesey to describe his relationship with Officer Strauss. He replied that it was a "work relationship". He said that Strauss was a great employee and he wished that he had more just like her. He said that there has never been anything other than that. Chamberlain asked Keesey if he has ever desired for there to be more to his relationship with Strauss. Keesey said, "no". Keesey was then asked about the conversation that allegedly took place in the POC on July 21 between him and Strauss wherein he asked Strauss to have a relationship outside of work with him. Keesey denied that allegation. He also denied the allegations of Strauss that she specifically told him that he was making an inappropriate request and that it should never happen again.

Keesey was then asked to address the text messages that he allegedly sent to Strauss on the morning of Monday, July 21. Keesey read the text message of July 21 at 0956 AM from him to Strauss and stated that he didn't mean to text Strauss and that it was a mistake and was meant for someone else. Chamberlain asked Keesey if he realized how unbelievable his response sounded. He agreed that it sounded unbelievable. Chamberlain continued to press Keesey regarding his explanation and Keesey continued to stand by his explanation. Chamberlain asked Keesey if he expected him to believe that he knew someone else that morning who happened to be traveling to Tennessee, who he hoped was sleeping well; possibly someone else who was working nights; to whom he had something to tell that they didn't want to hear and that he missed already - indicating that he had recently seen them. Chamberlain specifically asked him if he thought that Chamberlain was that stupid. Keesey said, no. According to Chamberlain's memo concerning the interview, he states that Keesey sat and his eyes watered up, but he continued to maintain his original story and, again, admitted that it sounded unbelievable. Chamberlain told him that he felt Keesey was lying to him. In his memo, Chamberlain said he found it troubling that a person accused of lying would not take offense to that accusation and would have a firm and maybe resentful response to such an allegation. He noted that Keesey had no such response. He showed no resentment for being called a liar.

According to Chamberlain, Keesey also talked about the texts between him and Officer Strauss' husband, Michael. He admitted that he did text Officer Strauss, after she and her husband had both asked him to stop texting her. Chamberlain

questions directly related to their job or work duties, under threat of disciplinary action, including discharge. However, the employee must also be assured that any compelled answers s/he may give during the interview cannot and will not be used in a subsequent criminal proceeding - thus protecting the employee from self-incrimination related to criminal matters. See *Garrity v. New Jersey*, 385 U.S. 493 (1967).

also brought up Keesey's previous incident with the Transportation Safety Administration (TSA) employee. (See below) Chamberlain asked Keesey how he thought that looked, coupled with this current allegation. He admitted that it didn't look good.

Lt. Malone also told Keesey this seems incredibly unbelievable and that he and Chamberlain seemed to be getting nowhere with him. Chamberlain then asked Keesey if he'd like a few minutes to think things over and then talk again. Keesey said, no.

Chamberlain concluded the meeting by telling Keesey that he didn't believe that he was telling the truth. He told him that there would be a formal IA investigation initiated into the matter. The meeting apparently ended on that note. No recording or formal transcript was made or taken during this meeting.

The TSA Incident et. al.

According to a memo, dated 1/16/14, authored by Deputy Chief Chamberlain and entered into the Record (Jt. Ex#8), the "incident" commenced on January 10, 2014. On that date, Chamberlain was informed by APD Lieutenants McKensie and Roediger that they had been made aware of a potential issue between Sgt. Keesey and a TSA employee by the name of "Lana". They said that they were informed of the situation by one of the APD's part-time officers; who, in turn, learned about it through a TSA supervisor by the name of Laura Rice.

McKensie and Roediger explained the situation, as they understood it, was that Keesey and Lana had started talking in person and via text. At some subsequent point in time, Lana learned that Keesey was married. On reflection, she decided that continued personal communication with him would probably be inappropriate. She allegedly then informed him of her feelings and asked him to stop communicating with her, but he didn't stop. The Lieutenants said they understood that Lana didn't feel threatened or scared, but just wanted Keesey to stop communicating with her.

Chamberlain, following the conversation with the Lieutenants, contacted Rice, TSA supervisor, and requested further information, but was told it would not be forthcoming for three or more days. Upon learning of the delay, Chamberlain decided that, because it was still Friday, the 10th, perhaps he should immediately talk to Sgt. Keesey about the situation.

He summoned Keesey into his office and asked if he knew a TSA employee named "Lana". According to Chamberlain, Keesey initially looked somewhat startled, but readily acknowledged that he knew a "Lana"; who worked for TSA. Chamberlain advised him that he had just

received some third-hand information to the effect that there may have been some unwanted communication between Keeseey and Lana. Keeseey responded by stating that he and Lana were recent friends and had been communicating for a couple of weeks. Chamberlain asked if Lana had ever asked him to stop texting her. Keeseey said yes, that earlier that day they had been talking and she had indicated that she felt it inappropriate to be texting with a married man and she specifically asked him to stop. Chamberlain asked Keeseey if he had stopped texting her and Keeseey said that he had. He also asked Keeseey if it was clear that he shouldn't contact her again from this point forward and Keeseey answered yes.

On the following Monday, the 14th, Chamberlain met with TSA supervisor Rice. In the course of their subsequent conversation, he learned that Rice really wasn't Lana's supervisor - they were just friends. Rice indicated that Lana had told her about the situation with Keeseey and her discomfort upon learning that he was married, merely as a female friend, and in confidence. Rice conceded to Chamberlain that Lana didn't know that Rice had talked to APD about the matter and acknowledged that she probably had to let her know that she had taken it upon herself to bring the matter to APD's attention. She noted that Lana would be upset with her. She told Chamberlain that Lana wasn't concerned, afraid, or upset with Keeseey and she agreed with Chamberlain that if Keeseey agreed not to have further contact with Lana, that would quickly resolve the situation.

That was effectively the end and close of the "TSA Incident". The Employer acknowledges that the "Incident" does not rise to or constitute conduct supporting any form of disciplinary nor adverse action.

In the hearing, the Employer made reference to one other previous situation involving Sgt. Keeseey and a female Officer-coworker and documented by a file memo from a Commander Matt Christianson of APD, dated July 23, 2012 (Jt. Exh#8). According to the memo, Christianson received an oral report from APD Deputy Chief Tolsma to the effect that he, Tolsma, had with Officer Mahon, an APD police officer. Tolsma said that Mahon told him that about a month earlier, Officer Hobbs, a female, had been in the gym with Sergeant Keeseey, doing push-ups. After doing a few, Hobbs told Keeseey that she was struggling and that the push-ups were causing her back pain. Keeseey then came over and began rubbing her back and subsequently grabbed her hips in an attempt to help her with the push-up movements. At that point, Hobbs told Keeseey that she was done with the push-ups and got up and subsequently left the gym. Mahon told Tolsma that Officer Hobbs had not spoken about the incident since that time and had not addressed the issue directly with Sgt. Keeseey.

About a day after the conversation with Tolsma, Christianson meet with Officer Mahon and she confirmed the facts that he had previously received

from Tolsma. Mahon told Christianson that Officer Hobbs did not want the command staff to talk to Keeseey, since she felt that it would make things difficult on her shift. Christianson suggested that Hobbs address the issue directly with Sgt. Keeseey and she agreed to do so.

Several days later, Christianson met with both Mahon and Hobbs at the MAC offices. Hobbs told him that she had met with Keeseey and informed him that the events in the gym and the push-ups had made her feel uneasy and that it was unwelcome. She said the subsequent conversation with Keeseey went well and she did not believe there would be any future issues of that type. Hobbs went on to specifically request that Christianson not talk with Keeseey about the matter. Christianson closed the conversation by reminding Mahon and Hobbs of APD's policy on harassment and that they should report any such situations to either him or the Chief.

Apparently, Christianson honored Hobbs's wishes and did not mention anything to Keeseey about the matter. Like the "TSA Incident", above, the Employer acknowledged on the Record that this situation did not involve conduct justifying either disciplinary or any other adverse action with respect to Sgt. Keeseey.

On August 8, Deputy Chief Chamberlain sent a Memo to Lieutenant Keith Roediger, the APD Internal Affairs Manager and Chief Everson, formally requesting that an Internal Affairs Investigation be initiated regarding the concerns that Officer Lora Strauss had discussed with Lt. Erickson on July 29 involving Sergeant Keeseey. In the memo, Chamberlain reviewed the specifics of the situation as outlined by both Officer Strauss and her husband, Michael. He also reviewed the statements made by Sgt. Keeseey in the interview that took place on August 7.

He concluded by noting that, *"Although Keeseey indicated that he did contact Strauss after she told him to stop, I believe that it's very likely he was being untruthful when I asked him if he was pursuing a relationship with her. I also believe Keeseey was untruthful when he told me that the text message listed above was meant for someone else and he accidentally sent it to Strauss."*

He went on to say, *"It should be noted that Sergeant Keeseey may have a pattern of behavior that needs to be looked into. There is a previous instance (January, 2014) involving a female TSA employee that has some similarities to the current allegations concerning Keeseey."*

Chamberlain closed the memo by specifically requesting that the IA Investigation look into possible policy violations with regard to harassment of Officer Strauss and untruthfulness, by Keeseey, in connection with the August 7 interview.

Later on August 8, Lt. Roediger issued a memo to Sgt. Keesey advising him that he was now the subject of a formal IA investigation concerning a complaint received from an officer under his supervision, regarding misconduct toward that officer. Concurrently, Roediger also sent a similar memo to Officer Strauss advising her that she would be interviewed in connection with the IA investigation of her complaint against Keesey.

Lt. Roediger commenced his IA investigation by conducting a formal interview of Officer Lora Strauss on August 12. In addition to Roediger and Strauss, Anita Bellant, a representative from MAC Human Resources department, was also present. Strauss was given the appropriate "Garrity" and "Tennessee"⁴ warnings. The interview was recorded and the recording was subsequently transcribed. The following are salient excerpts from that interview"

1. Her conversation with Sgt. Erickson on July 29. *"Um, I just mentioned to him that - I wasn't really looking to get anyone in trouble - wasn't looking for a lot of drama, just wanted to make him aware of what I thought to be some inappropriate texts from my Sergeant (Keesey). And the reason I had a conversation with him (Erickson), um, was because at some point down the road, if it didn't stop, I didn't want, you know, a month later this to be the first that he heard about it."*
2. The conversation with Sgt. Keesey in the Police Operations Center (POC) toward the end of the work shift on July 20-21. Strauss stated, *"...so that the end of - ending that shift he made some comment about how, um, you know, 'I enjoyed working with you.' Which I took as a compliment. Um, but towards the end of the compliment it was more like, um, 'Well I'm really going to miss you.' And then - I don't remember the exact words. Some conversation about how he was interested in a relationship outside of work and I told him that - first of all, I'm not here looking for a husband, I'm not here looking for a boyfriend, I'm not here looking for anything other than basically to come to work and do my job and be left alone. Which I had - had a conversation with both of my Sergeants when I asked them, you know, 'What are your expectations of me?' And in return I told them basically I want to come to work and, you know, do what you expect and you know, I think that overall I have a high work ethic. So I didn't want it to be like, off the charts, but not like crappy work either, you know what I mean?"*
3. Follow-up Question: Lora, when he asked you that question about having a relationship outside of work, what did you take that to mean? Strauss responded, *"Like basically did I want to have an affair with him."* She continued, *"Is what I took it to mean. I don't know what he*

⁴ When a Minnesota government entity collects information or data from an individual, about that individual, it is required to give the individual a Tennessee warning notice (See Minn. Stat. §13.04, Subd. 2). The purpose of the warning notice is to enable the individual to make an informed choice as to whether to give information or data about him or herself to the government entity.

meant by it, but that's the way I took it. And I told him that, um, you know, basically I don't need any drama in my life. Um, I'm not interested in that and, you know, basically like you're my boss and I'm on probation, and it's not ever going to happen. And I told - I said, you know, between, you know, my dad having cancer, trying to, you know fly back and forth and all of that, stuff with our daughter that - I don't need the drama."

"I said, you know, 'I don't want to be the topic of conversation. I don't want to be in the middle of whoever's radar. I just want to be left alone."

4. Question: what was his response when you told him? Strauss said, *"He's like, Oh, you know, I told him - I said basically something to the effect of, you know, I'm not like some trophy to be conquered or something to that effect and he's like, 'Well I'm sorry,' you know, basically I - he apologized. And that was kind of that."*
5. Question: " - is there any doubt in your mind that these text messages [referring to the two text messages sent to her by Keesey on the morning of July 21] were intended for you? Strauss stated; *"Um, I mean I don't know his intent - and I know that he said that they weren't, and I suppose that is a possibility, I don't know, you know, who he knows or who he hangs out with. I - and I really - it doesn't matter, but I mean it - felt like it."*
6. Question: So I guess - do you believe these texts were intended for you? Strauss' answer; *"I do"*. Question: Okay, why do you believe that? Strauss' answer; *"Well, I mean obviously and everyone that looks at work force knows that I was going - well, I shouldn't say that. There, uh, there's not very many people that - and maybe I'm wrong, but I don't believe that there's a whole lot of people that know, you know, that my dad has cancer. I'm trying to be the care giver. I think that, you know, people can look at the work force and see that I'm on FML [Family Medical Leave], you know, it doesn't take a genius to figure that one out. But um, you know, I - I'd say."*
7. Question: ...I previously asked you - do you believe those texts were intended for you - you indicated yes. Strauss; *"Mm-hm."* And I asked why you believe that. Strauss' reply; *"Oh, um, well because of the conversation where he basically, you know, said that he was interested in me and I think that's why he wrote, 'It may be something you don't want to hear.' which is something I don't want to hear."*
8. Strauss was subsequently questioned about how and why her husband, Mike, had begun texting Sgt. Keesey on July 21. She stated that when she got home after ending her night shift at 7 AM, she found Mike and her daughter, both asleep. She carefully avoided waking them, but left Mike a note to the effect that she was going to get some sleep for a couple of hours and then they would all spend some time together before she flew to Memphis that evening. When she awoke, she saw the text messages from Keesey and thought, *"Oh my God! I*

so don't need this crap." She then decided to tell her husband about Keeseey's messages and understood that Mike subsequently sent Keeseey a message to the effect, "Why are you texting my wife?" Or, "Stop texting my wife," or something to that...

9. Strauss was questioned about the nature of her overall working relationship with Sgt. Keeseey, up until the events of July 21. She said that during the course of the two months or so that she worked with him on the night shift, she found him to be a very good "boss" and felt that they had a good working relationship. She said that up until July 21, she had not experienced any inappropriate or questionable behavior toward her by Sgt. Keeseey.

The next formal interview in Lt. Roediger's IA investigation took place on August 18 with Sergeant Jeffrey Keeseey. The interview took place at the MAC offices and present were Lt. Roediger, Ms. Ballent from the HR Dept., Sgt. Keeseey and Isaac Kaufman, the General Counsel for Law Enforcement Labor Services, Inc., as Keeseey's Union Representative. The Parties are in agreement that prior to the start of the interview, Sgt. Keeseey was briefed on the appropriate Garrity and Tennesen Warnings. The interview, like Strauss', was recorded and transcribed.

The following are some salient excerpts form the interview:

1. Question: Um, she's [Officer Strauss] saying that you asked her if she would like to have a relationship outside of work. Answer; "No". Question: You never said that... Answer; "No". Question: OK, so you're saying that conversation never happened? Answer; "Yes, *I'm saying that conversation never happened.*"
2. Question: Was there any text messages that took place between you and Officer Strauss? Sgt. Keeseey answered by stating, "Yes", there had between text messages between him and Officer Strauss. When asked when those started, he said 2-3 months back, shortly after she joined the night shift. He said that he initially noticed that Strauss appeared tired and worn out when reporting for work and after some further conversation she had acknowledged that she was dealing with a situation involving her father in Memphis TN, where he was dealing with cancer and she was trying to help him. He said at about that time she had gone to Memphis to see and help her dad and he had texted encouragement and concern to her while she was there. He said that after she returned from that trip, they had continued to text each other back and forth, i.e. "*You wanna go to coffee or you wanna do anything like that?*"
3. Question: What was the most recent text messages exchange that you've had with her? Answer; "*The one I believe started this investigation I guess - I don't know - was, uh, I know there was one after that. But I don't know what u - I don't remember what was said. ut I believe the one that started this one was - there was a text message.*"

I was at home. And once again, she was goin' back to Memphis to see her dad for her c- his chemo or somethin'. And I think I was thinkin' about her goin' down there again sayin', 'Hey, make sure you take care of yourself when you're down there again.' And then I set the phone down cause I doin' somethin' in the garage. And then I realize that I had to tell another friend that asked me to do somethin' - to help her out on somethin' - I said, 'Hey, um, somethin' I gotta tell ya, You're probably not gonna like it, but I'm not gonna be able to help you on this. But I'll - I still miss you.' And that - that's u- t looks bad, but that's what happened. And I believe that's where this started from. Cause then her husband said, 'Who is this?' Sent me a message, 'Who's this and why are ya texting my wife?' And I said, 'Op, sorry I sent to the wrong person.' And then - I get this E-mail, uh, not E-mail, text message back and forth. Uh, basically her husband saying, 'You're a liar. I don't believe you.' ...I said, Well, I'm not a liar. That's what I did, I sent to the wrong person. Keesey went on to say that he and Strauss' husband continued to exchange several more text messages, with the husband continuing to accuse him of being a liar and Keesey insisting that he wasn't lying; that he had sent the message to the wrong person. Finally, at one point, Mike Strauss indicated to Keesey that he was going to call Deputy Chief Chamberlain at APD. Keesey stated, "And that's where I figured this was probably gonna' start comin' down the road. ...And I think I sent her another one. Basically, 'Are you all right? What's goin' on - on...' And sent me another one that said, 'Leave her alone.' I said, 'Okay.' Then I just - I deleted all numbers and all everything."

4. Question: I want to concentrate for a minute on this first message where it says, "*I wana' tell you something you may or may not wanna' hear. Call me tonight when you get to Tennessee. I will talk to you later. I hope you slept well today. I miss you already, talk to you later.*" Are you saying that text message was not intended for her? Answer; "Yes." Question: Who was it intended for? Answer; "*A friend of mine that asked me to do - another friend asked me to do her a favor - to help her out on a project. And I said, 'I can help you.' And then I - after time went on I thought, 'I'm not going to be able to make it.' That's where I sent, 'Hey I - somthin' I gotta' tell ya'. Not gonna' want to hear it, I can't help ya'.' Um.*"
5. Question: Who is this friend? After several more questions in the same vein, Keesey finally identifies the "friend" as Amy Rolland-Martinek, "*...a friend of mine outside of work.*" Lt. Roediger immediately recognizes the name as a former employee in APD. Ms. Martinek had previously worked as a sort of Traffic Monitor at the airport, issuing parking tickets, directing traffic and insuring that the traffic kept moving. At some point in 2013 or early 2014 she had been fired for misconduct in connection with her job duties.

6. By Union General Counsel Kaufman to Keeseey, "I think you need to explain to them if some or all of the content of that message [to Strauss, as above] was not meant to be received by Officer Strauss. I think you need to explain as specifically as possible what those circumstances were." Answer, Keeseey; *"This friend Amy, she was going through a skills program⁵ and she asked me to assist her on some of the building search exercises. And I said, 'Yeah, I can help you do that. When do you wanna' do this?' And w- she set up a date and found the road and - and I said - that's when that came up. I said 'I'm not gonna' be able to make it. I can't do this.' It's just not right I guess you'd say, especially former working here. And I just - I didn't want to get in that bind. So I said, 'I can't do that.' With me saying this, its actual - I was working in the garage [at his home] when I did that. And I was also thinking about texting - Strauss is going to Memphis again to visit her dad. I was thinking, 'God, I wonder how her dad is doing?' I don't - this is where I cannot explain. I think I started two different messages in the middle and I don't know how I messed it up, I truly don't. I know it sounds bad and everything else."*
7. Question: Does Amy have any connections back to Tennessee? Answer; "No." Lt. Roediger points out to Keeseey that the message to Strauss and his explanation behind the message still leaves a lot of further questions as to exactly how the message allegedly intended for Amy got meshed with the message to Strauss. Keeseey readily acknowledged the problem, *"I understand. I understand what you are saying. And I don't know - I don't know how I did it, to be honest. But clearly it was typed a message somehow and I know I set a phone down because I was working in the garage on a car and then I went back. I don't know if I was thinking about two different things and went back. It didn't help that I was drinking a beer when I was working on the car too. But I mean it - besides it wasn't meant for her. I'm thinking what I w- and I'm guessing now, I'm only guessing - that I was thinking, 'Ey, I'd better check Strauss, make sure she's doing all right when she gets to Tennessee.'* And then I was also thinking, *'Ah dude, I can't - I'm not going to be able make this - help Amy with this, ah searching buildings.'* So I don't know how I did it, I truly don't."
8. Question: Who was your comment about *'I miss you already.'* intended for? Answer; *"...Amy, because I was looking forward to seeing her. and then I said, 'Yeah but I can't. I'm telling her, 'I miss you.'* Because *I wasn't going to be able to make that appointment. Which, of course she never got this message, because I sent it to the wrong person."* Question: Do you have a personal relationship with Amy? Answer; *"No just - just a friend that I met here at work when she was a CSO*

⁵ Ms. Martinek was then taking school classes/courses to practice and develop the knowledge and skills necessary to successfully take and pass the exams required to obtain a MN Peace Officer License. That license is necessary to apply and qualify for a job position as a sworn law enforcement officer.

here. And, although it didn't work out here when she was an employee I'd still talk to her, 'How is school going?' Matter of fact, she just completed skills. So..."

Lt. Roediger concluded the formal witness interviews in his IA investigation with two (2) telephone interviews with Amy Rolland-Martinek. The first interview took place on August 18 and the second on August 27.

The following are some salient excerpts from those interviews:

1. Question: What kind of contact have you had with Sgt. Keesey since you left the APD? Answer; "*Just talk - just like you know, just basic contact , just checking in with him with work and how things are going, if any questions with references or things like that.*"
2. Question: Are you in a skills program at school right now? Answer; "*No, I'm done. I completed it just last week actually.*" Question: Have you asked Sgt. Keesey for some help with the skills program at some point? Answer; "*Yeah. I mean I have - I mean just like the basic stuff in me talking with him and like running through scenarios and things like that.*"
3. During the remainder of the interview, Lt. Roediger continued to question Ms. Martinek about her recollections regarding the timing and frequency of her contact with Sgt. Keesey over the course of the past several months. Martinek stated that she had fairly regular contact with Keesey up until about June. At about that point, she said he seemed to indicate that there was a lot going on in his life and their contacts declined significantly after that. They did continue to text one another occasionally, when she had skills program questions. When asked if she had contact with Keesey in about late June or early August regarding help with skills training, she said, "No." She did acknowledge that she had seen Keesey the Saturday, preceding this interview, to talk about skills and he gave her advice about how to apply and they talked about scenarios, etc.
4. In the second telephone interview, Lt. Roediger opened the conversation by asking Martinek about her "relationship" with Sgt. Keesey? Answer; "*...We're just friends.*" Question: Nothing more than that? Answer; "*...Nothing more than that.*" Question: Any type of sexual relationship? Answer; "No." However, Martinek subsequently acknowledged that there had been a situation, back in about March when for a while, she and Keesey "*kinda cross the line but we moved it back.*" She said that during that point in time, Keesey was talking about his really bad home life and they kissed and went over the line and things like that. She indicated that was a momentary and isolated incident and they returned to being just "friends". She also noted that this incident took place after she had left employment with APD.

5. Roediger questioned her about whether she had experienced any inappropriate behavior from Sgt. Keesey during her period of employment with APD. She said No.

Lt. Roediger subsequently prepared a formal Memorandum outlining the details of his Internal Affairs investigation involving Sergeant Keesey. According to the document, the allegations against Keesey were summarized as follows:

1. Harassment and/or unwelcome solicitation of a personal or sexual relationship towards the complainant [Officer Lora Strauss].
2. Conduct unbecoming a supervisor.
3. Untruthfulness during a Garrity investigative interview.
4. Untruthfulness during a Garrity formal statement.

Roediger then reviewed each of the allegations, with his investigative findings, and made a specific recommendation regarding each allegation.

1. He concluded that the Harassment allegation against Keesey should be Sustained. He based that conclusion on the fact that while Keesey specifically denied making any verbal solicitation to Strauss in the POC on the morning of July 21; his subsequent text messages to Strauss later that morning clearly support Strauss' report concerning the verbal solicitation. Roediger additionally noted that after both Strauss and her husband, Michael, each told Keesey not to text her anymore, he continued to do so, to wit; on July 28 Keesey texted Officer Strauss to the effect, "*You around.*" Accordingly, Sgt. Keesey's conduct violates APD Policy 340.3.2, General Conduct: cl. O: Unwelcome solicitation of a personal or sexual relationship while on-duty or through the use of one's official capacity.

2. Conduct Unbecoming of a Supervisor. Sustained. Roediger based this finding on the fact that Sgt. Keesey's verbal suggestion/solicitation and subsequent text messages to a subordinate officer is damaging and can leave no doubt as to his inability to provide reliable and consistent supervision to the officers under him. Sgt, Keesey was in agreement that, as a supervisor, he was held to a higher standard than his subordinate officers. It was also noted that Sgt. Keesey had completed the "Respectful Workplace" Training conducted by MAC in 2013 and was aware of his responsibilities pursuant to MAC's Ethics Policy. Roediger also noted that "*one cannot find this Allegation exonerated or not-sustained without finding Allegation #1 (above) with the same conclusion and vice-versa. They are tied together.*"

Finally, Roediger noted that Keesey had admitted to two other instances where he had made women employees at his workplace "uncomfortable", i.e. the Officer Hobbs - push-up situation and the Lana, the TSA Agent. Accordingly, Lt. Roediger concluded that the evidence was sufficient to establish violations per:

APD Policy Conduct, 340.2: An employee's off-duty conduct shall be governed by this policy to the extent that it is related to act(s) that may materially affect or arise from the employee's ability to perform official

duties, that may be indicative of unfitness for his/her position or that brings discredit or harm to the professional image or reputation of the department, its members, and the law enforcement profession, and; APD Policy Conduct, 340.3, n: Any on or off-duty conduct that any employee knows or reasonably should know is unbecoming a member of the department or is contrary to good order, efficiency or morale, disgraceful or that tend to reflect unfavorably upon the department or its members.

3. Untruthfulness under Garrity: Sustained. For purposes of this finding of fact and disposition, both allegations of untruthfulness under Garrity for the investigative inquiry and formal Internal Affairs statement are combined (Allegations 3 & 4).

According to Roediger, the Complainant, Officer Strauss, was steadfast and consistent in her statements under Garrity as well as reporting to a manager and her husband that Sgt. Keesey solicited her for a relationship outside of work, both verbally and via text message. The Complainant's interpretation was that Keesey was looking to have an "affair". Sgt. Keesey denied all allegations at the investigative inquiry done by Deputy Chief Chamberlain as well as during the formal statement. Sgt. Keesey denied making the verbal solicitation, however, when one examines the contents of the text messages received by the Complainant it supports the allegation of the verbal solicitation taking place. Sgt. Keesey and the Complainant were both on-duty when the verbal solicitation took place. The Complainant responded verbally and via text to Keesey clearly indicating she was uncomfortable with the situation including pointing out Keesey was her "boss". When Keesey was subsequently confronted by the Complainant's husband, he replied it was accidental text intended for another person. The evidence garnered as a result of the investigation shows that a preponderance of the evidence supports the allegation made by the Complainant. The text messages, in particular, the second, separate text, sent approximately an hour after the first text, lend substantial credibility to the fact that Keesey knew the intended recipient of the text messages and thereby lend credibility to the allegation made by the Complainant of the verbal solicitation. Keesey denies the verbal solicitation, but admits to sending the texts; however he maintains he accidentally sent the texts to the wrong person. When one examines all the facts garnered, this has all indications of Keesey making a false statement under Garrity. It does not make reasonable sense to a person that Keesey not only sent one text to the incorrect person, but a subsequent follow-up text one-hour later, which contained language clearly showing the content was along the same lines of communication as the verbal solicitation and the first text message, i.e. "*I miss you already*".

Roediger goes on to point out that he contacted Amy Martinek, who Keesey claimed was the intended recipient of his first text message. He

claimed he was attempting to text her about not being able to help here with building searches for her law enforcement skills program. Martinek said she has had fairly regular contact with Sgt. Keeseey since June. She denies receiving any text messages or calls from Keeseey, around the same time-frame as this Complaint, concerning building searches and Keeseey being unable to help her. If she, indeed, was the original intended recipient, it begs the question as to why Keeseey didn't follow up with her when he realized his supposed mistake. Martinek was subsequently contacted and interviewed a second time and she admitted that she and Keeseey had somewhat of an intimate affair and in her words, "*went over the line*", which included such things as kissing. She also clarified the last time that Keeseey told her that he couldn't help her with building searches was back in June, not July. **Note:** During Keeseey's Garrity interview (page 11 transcript) he was asked, "Do you have a personal relationship with Amy?" Keeseey stated, "No just -just a friend that I met here at work when she was a CSO here". If Martinek's statement is credited, Keeseey lied about the level of that relationship.

Accordingly, Lt. Roediger concluded that certain of Keeseey's statements, as noted, made in the formal Garrity interview were untrue and therefore constituted violations per:

The Garrity Advisory: *I will be asking you questions specifically, directly and narrowly relating to your performance of official duties or fitness for office. If you refuse to answer these questions, or provide false or incomplete information, you may be subject to disciplinary action, including discharge.*

Airport Police Department Rules and Regulations:

1.04 Insubordination; Subd. 1: *Department members will promptly obey all lawful orders of a supervisor. (see Garrity Advisory)*

1.18 Testimony: *Department members will, upon the direction of the Public Safety Director (Chief) or his designee, promptly, truthfully and completely answer all questions specifically directed and narrowly related to the scope of their employment and operation of the department. Refusal or failure to do so shall be grounds for disciplinary action.*

Lt. Roediger subsequently forwarded his Memorandum of August 29, together with all the documentation associated with his Internal Affairs investigation of the Keeseey matter, to Deputy Chief Matt Christenson, Deputy Chief Shawn Chamberlain and Chief Michael Everson for their consideration and appropriate action.

On September 8, Chief Everson informed Sergeant Jeffrey Keeseey, by letter, of the Department's Intent to dismiss him from APD. In the letter, Everson affirmed all of Lt. Roediger's findings and conclusions with respect to each of the four (4) specific Allegations.

In his letter, Chief Everson noted that in determining the appropriate level of discipline, he had reviewed Keeseey's entire record of service with the APD. He noted that with respect to the allegations involving inappropriate actions with respect to Officer Strauss, he had considered demoting Keeseey from Sergeant back to a non-supervisory Officer position. However, when the allegations of untruthfulness were considered, it was clear that without credibility and truth, Keeseey's usefulness to the Department and his ability to carry out his duties and responsibilities as a police officer would be severely impaired. Accordingly, Chief Everson reached the conclusion that Discharge was really the only suitable and appropriate action.

As noted previously, Sergeant Keeseey, following receipt of Chief Everson's September 8 letter of Intent to Dismiss, subsequently timely invoked his right of appeal per the provisions of Veterans Preference Act (VPA).

SUMMARY OF MAJOR ARGUMENTS AND POSITIONS OF THE PARTIES

The Employer:

The Employer hired Jeffrey Keeseey (Keeseey) as a police officer in October 2001. In 2005, APD promoted Keeseey to a patrol sergeant position where he directly supervised APD officers. Sgt. Keeseey worked most recently on the night shift supervising about ten officers—8 men and 2 women.

Keeseey supervised probationary officer Lora Strauss (Strauss) when she rotated through the night shift in the summer of 2014. On Strauss's last night shift, overnight from July 20 p.m. to July 21 early a.m., Keeseey approached Strauss when she was alone and told her he was interested in having a relationship with her outside of work. Strauss definitively told him no and he apologized.

Strauss left work at 7 a.m. to go home to sleep for several hours prior to flying to Tennessee that evening to visit her ailing father for a week. As Strauss's immediate supervisor, Keeseey knew about Strauss's semi-frequent trips to TN to help her family.

Keeseey also went home at the end of the shift in the morning but did not go to bed immediately. Keeseey sent two texts to Strauss mid-morning on July 21 expressing concern about her adequate rest and referring to her upcoming travel to TN. He also texted that he had "SOMETHING" to tell her that she "may or may not like to hear." In a subsequent text, he said that he "missed [her] already."

Strauss's husband, Mike Strauss, a Minneapolis Police Officer, saw the mid-morning texts on his wife's phone while his wife was still sleeping. He responded angrily to Keeseey with his own reply texts questioning why Keeseey was in contact

with his wife. When Lora Strauss woke up, she also texted Keesey and informed him that his texts were “inappropriate” and “unprofessional.” She asked Keesey not to text her anymore. After Strauss’s final July 20-21 shift, Keesey was no longer Strauss’s supervisor. He had no business reason to send texts to her.

Later in the day on July 21, after he woke up, Keesey sent texts to both Strauss’s claiming that he had mistakenly sent texts to Lora Strauss but that were actually intended for someone else. Neither Mike nor Lora Strauss believed Keesey’s story. Lora Strauss told her husband she would handle the situation. The next day, after arriving in TN, Lora Strauss sent an angry text to Keesey, venting about how he had caused drama in her life.

On July 28, one week after the first texts and the very day Strauss returned to work after her week in TN, Keesey texted Strauss yet a third time. His message said, “you around?” To which Strauss replied “I’m at work.”

A frustrated Lora Strauss then immediately contacted her husband. Mike Strauss sent a text to Keesey shortly thereafter essentially telling Keesey to back off and demanding that Keesey acknowledge that he understood Strauss’s stop it message. Keesey texted “yes”, he understood, and he would stop.

After the third text described above, Lora Strauss concluded that Keesey would probably not leave her alone and that she could not continue to handle the situation by herself. On July 29, she set aside her strong aversion to workplace drama and filed a formal complaint with the head of patrol, Lt. Erickson. She reported Keesey’s earlier solicitation for a relationship and also the three texts. Lt. Erickson in turn referred the complaint to Deputy Chief Chamberlain for handling.

Chamberlain and another lieutenant conducted an inquiry with Keesey. Chamberlain offered Keesey the option of union representation prior to the meeting. Keesey declined union representation. The inquiry was not recorded and was not intended to be a formal statement under the MN Police Officer Discipline Procedures act. Chamberlain gave Keesey a Garrity warning prior to asking him about Strauss’s complaint.

Keesey denied soliciting Strauss for a sexual relationship on her last work shift. Regarding the texts, he told Chamberlain the same tale that he had first woven for husband Mike Strauss about how the July 21 texts were intended for someone else but that he had mistakenly sent them to Lora Strauss.

Chamberlain did not believe Keesey’s story and challenged Keesey repeatedly about his lack of truthfulness. Though Keesey admitted that the facts did not look good, he stuck to the account he had originally developed to try to get himself off the hook with Lora Strauss’s angry police officer husband. Chamberlain advised Keesey that he would order an internal affairs investigation.

Lieutenant Keith Roediger conducted the internal affairs investigation in early August, 2014; starting with a Lora Strauss interview. He gave a Garrity warning to Lora Strauss prior to her interview. Her responses were consistent with the information she initially reported to management. Roediger reviewed the texts in question on Lora Strauss's phone, as well as related texts on Mike Strauss's phone.

On August 18, Roediger formally interviewed Keesey. Keesey's union attorney was present, the interview was recorded and Keesey signed a written Garrity warning (his second Garrity warning) before the interview began.

Keesey again denied soliciting Strauss for a sexual relationship. He testified that he merely made a friendly comment about how he enjoyed working with Strauss.

Regarding the texts, Keesey told Lt. Roediger that on July 23, Keesey forwarded one of the texts originally exchanged with Mike and Lora Strauss to the APD sergeant pool phone. He said he tried to forward others but was not successful. Keesey had deleted every other text from his own phone for the relevant time period. Roediger reviewed the one text that Keesey had saved on the APD phone (which matched texts later provided by the Strauss's).

Then Keesey related a fantastical tale about how he intended to send texts to a friend but accidentally sent the texts to Officer Strauss. After the union attorney discouraged Keesey's initial evasiveness about his friend's identity, Keesey identified the friend as a former MAC employee, Amy Martinek. Keesey explained that he was assisting Martinek with a law enforcement skills program. Keesey described an elaborate set of circumstances that linked his interactions with Martinek to the texts he had intended to send to Martinek, not Strauss.

Keesey's translation of events:

- "I want to tell you SOMETHING you may or may not want to hear" meant that he was not going to help Martinek prepare for building searches.
- "I miss you already" meant that he would miss Martinek because he could not help her with the building searches prep.
- The references to "TN" and "hope you slept a while today" accidentally became part of the message intended for Martinek because Keesey was concerned about Strauss and thinking about Strauss while at the same time picking up and putting down the phone to text to Martinek, working on a car in his garage and drinking beer, all at the same time.

Keesey admitted sending a third text to Strauss one week later, after she had asked him to stop and after Keesey had assured Mike Strauss that he had deleted Lora Strauss's number from his telephone.

During the formal statement, Lt. Roediger drew Keesey's attention to two other problem encounters with women at work.

- In 2012--a female officer complained that Keesey touched her hips while she was doing pushups. Management counseled her to speak directly to Keesey about her discomfort. She did so, the behavior stopped and she did not pursue a formal complaint.
- In early 2014, a Patrol Lieutenant counseled and coached Keesey about a complaint received indirectly from a female TSA employee who wanted texts from Keesey to stop. Keesey agreed to stop. No formal complaint occurred.

Keesey remembered the two events above, but maintained that he had no intent to start a sexual relationship with either woman, nor did he seek a sexual relationship with former employee Amy Martinek or probationary employee Lora Strauss. Keesey explained that he has a “warped sense of humor.” He claimed that he tells his officers that if anyone is uncomfortable with anything he does, they should tell him about the problem and he’ll stop.

After taking Keesey’s statement, Lt. Roediger interviewed Amy Martinek twice on the telephone. Martinek confirmed that she and Keesey had talked about the skills program and his potential assistance with the building searches skill set. However, contrary to Keesey’s testimony about breaking the news to Martinek in late July that he wouldn’t be able to train with her, Martinek said Keesey told her in June that he couldn’t help her.

Contrary to Keesey’s formal statement, Martinek testified about a relationship with Keesey that went beyond friendship one time. Martinek said, “we kissed and went over the line” but “we moved it back.” Martinek talked about the support she received from Keesey while she still worked at MAC. Martinek also volunteered that at one point during her MAC employment, she complained to Keesey that she was frustrated about an untruthful rumor going around at work that she was dating an APD officer. Keesey advised Martinek, “welcome to the world of law enforcement, you’re a woman, get used to it, suck it up.”

Lt. Roediger completed his investigation finding each allegation sustained. Specifically, he credited Lora Strauss’s interpretation of the conversation in which she alleged that Keesey had solicited a sexual relationship with her outside of work. Lt. Roediger further found that Keesey sent three personal texts to Strauss.

Lt. Roediger did not credit Keesey’s explanation of accidental, misdirected texts. The timing of the texts and the plain meaning of the words proved that Keesey intended those messages for Strauss. Even if Keesey did not lie about the first two texts, the third text, which he admitted sending to Strauss a full week after she explicitly told him to stop contacting her, is proof of harassment.

Ultimately, Chief of Police Mike Everson made the decision to terminate Keesey’s employment. Chief Everson decided that Keesey’s discharge was the

Chief's only option for two key reasons:

1. Keeseey appeared unable to correct or control his inappropriate behavior with women in the workplace.

As recently as April 2014, Keeseey participated in training for supervisors that addressed sexual harassment. That training gave specific guidance about appropriate behavior boundaries between supervisors and their supervisees. The training also clearly defined how Keeseey's behavior put the entire organization at risk for sexual harassment litigation.

Keeseey's expressed belief that he did not need to change his sexually harassing behavior unless and until a subordinate complains is clear evidence that despite the Employer's best efforts, Keeseey just doesn't get it.

2. When confronted about his inappropriate behavior, Keeseey lied. He lied to Lora and Mike Strauss, he lied to his superiors--Deputy Chief Shawn Chamberlain, Lieutenant Justin Malone and Lieutenant Keith Roediger; and he lied to an HR representative. (He also lied under oath to a 3-member veteran's preference panel at the hearing in March).

Keeseey's supervisors must be able to trust Keeseey's word. By lying, Keeseey irrevocably breached the integrity and trust necessary to be an effective APD police officer of any rank.

Keeseey's lying also severely limits his usefulness as an Employer witness at a court hearing since prosecutors could successfully challenge his credibility.

On September 8, 2014, the Employer discharged Sgt Keeseey for violations of APD policies on sexual harassment, for conduct unbecoming a supervisor and for lying about his conduct during questioning prefaced by Garrity warnings. The MAC acted reasonably in terminating Keeseey's employment. There are no extenuating circumstances that warrant modifying the discharge.

The Employee-Veteran (by Law Enforcement Labor Services, Inc.):

LELS views the case as a proposed discharge resulting from allegations, by the Employer, that Sergeant Keeseey inappropriately sought a sexual relationship with a female subordinate, Officer Lora Strauss, and that when he was confronted by management with this allegation, Keeseey untruthfully denied it.

At issue is whether MAC "has a proper basis to discharge Keeseey under the Veterans Preference Act, Minn. Stat. §197.46."

Pertinent Facts:

- Officer Strauss was a new hire on the MAC police force in the summer of 2014, and Keesey was her supervisor.
- Strauss' last overnight work shift with Sgt. Keesey was the evening of July 20, 2014 into the morning of July 21, 2014.
- Strauss had no problems or concerns of any kind with Keesey prior to this last shift.
- During Strauss' last overnight shift, she had a conversation with Keesey, which they both agreed began with him saying something to the effect that he had liked working with her and would miss her.
- Strauss says that the conversation continued, however, and that Keesey made a statement or statements which caused her to believe that he wanted her to have a sexual relationship or affair with her.
- In interviews with departmental supervisors, and in her testimony at the hearing, Strauss could not state specifically what words Keesey used to convey this intention.
- Sgt. Keesey categorically denies that he directly or indirectly proposed a sexual relationship with Officer Strauss.
- In the Internal Affairs investigative interview, Strauss said that she had not had any problems with Sgt. Keesey prior to July 20-21, 2014.
- LELS contends that there are a number of unreported and missing text messages that took place between Strauss and Keesey on July 20-21, 2014, which could be very relevant in this matter.
- LELS believes that Keesey truthfully told investigators, and the Veteran's Panel, that he unintentionally sent two texts to Strauss when he actually intended to send them to Amy Martinek.
- LELS contends that the other three alleged instances of improper behavior with women are unsubstantiated or without precedential merit.
- With respect to the alleged "personal relationship" with Amy Martinek, LELS states that the relationship was entirely appropriate and non-work related.

Major Arguments:

- MS 197.46 specifies that a Veteran may not be discharged except for incompetency or misconduct, and that this standard is the equivalent to the "Just Cause" standard of PELRA and most collective bargaining

agreements.

- Citing the *Enterprise Wire Company* case, LELS identifies Arbitrator Carroll Daugherty's seven-element test for just cause.
- LELS contends that the Airport Police Department did not give Keesey fair notice that the prior incidents with other females were a matter of concern. Furthermore, LELS argues that these other alleged incidents do not rise to the level of misconduct.
- LELS argues that the Department did not conduct a fair investigation of the allegations against Sergeant Keesey.
- LELS states that Keesey was told in the first interview, with Chamberlain, that punitive action was not contemplated against him.
- The first interview, by Deputy Chief Chamberlain, was not recorded. LELS contends that this failure is essentially a violation of PODPA, Minnesota Statutes 626.89, and that the interview constituted a formal statement.
- LELS argues that the circumstances of this first interview with Chamberlain had the effect of dissuading Keesey from seeking union representation.
- LELS discusses the “glaring” failure of the investigation to discover other text messages between Keesey and Strauss on July 21, 2015.
- LELS argues that there was no proof that Keesey was in fact seeking a sexual relationship with Officer Strauss during her final shift, or in the text messages.
- LELS argues that Strauss herself consistently was unable to state what it was that Keesey told her, or said to her that caused her to believe he was suggesting an affair.
- LELS notes that Strauss “candidly” admitted that she did not know what Keesey meant. LELS brief, p. 20.
- LELS argues that the conclusion by MAC that the word “SOMETHING” must mean a sexual statement is “wildly presumptuous.”
- LELS further argues that it is entirely possible that Keesey did in fact send a text to the wrong person, and that he was not untruthful in saying this to the investigators, or in his testimony.

In conclusion, MAC has failed to show that Sergeant Keesey should be discharged from his position for incompetency or misconduct. MAC has not proved that Keesey was pursuing a sexual relationship with Strauss nor it has not proved that Keesey was untruthful in the investigation. Accordingly, the Employee-Veteran requests that the proposed discharge be denied and vacated and that the Employee, Sergeant Keesey, be fully restored to duty.

ANALYSIS AND DISCUSSION

Dealing with employee discharge/termination cases, or, in this case, a proposed discharge are among the most difficult situations that labor arbitrators are called upon to decide or resolve. Such situations not only impact the employee involved, but also his or her family, co-workers and, of course, the employer and its management team. Accordingly, arbitrators do not take their responsibility lightly in such matters.

The historical intent behind the Minnesota Veterans Preference Act (VPA) is and has been to provide special recognition to military veterans of our Nation's armed services in connection with their employment by the state's public bodies, as employers. VPA specifically requires public employers to 1) give a measure of preference to qualified veterans in the hiring process and 2) to afford veteran - employees with full "due process" in connection with serious disciplinary or discharge situations.

The Veterans Preference Act specifies that a qualified veteran-employee "...shall [not] be removed from such position or employment except for incompetency or misconduct..." The burden of proof is upon the employer to demonstrate by a preponderance of the evidence that it is more likely than not, that the facts alleged and asserted are indeed true.

The Minnesota Supreme Court in *Ekstedt v. City of New Hope*, 292 Minn. 152 N.W. 2d 821 (1972) has further clarified the statutory language to require that the public employer establish that the veteran's alleged misconduct or incompetence:

- Relate to and affect the administration of the position.
- Are of a substantial nature directly affecting the rights and interests of the public.
- Touch the qualifications of the position and the performance of the veteran's duties.
- Establish that the veteran is not fit and proper.
- Does not fit the position.

Additionally, the Court held that, for purposes of these VPA proceedings, the requirement that the public employer establish "misconduct" to justify a veteran's removal from employment can be viewed as substantially equivalent to the "Just Cause" standard found in most private sector labor agreements.

In that vein, it is noted that the Parties have clearly indicated that they are familiar with and aware of the "Just Cause" standard and more specifically with Arbitrator Carroll R. Daugherty's widely known "*Seven Tests of Just Cause*":

1. Did the employer give the employee forewarning or foreknowledge of the possible disciplinary consequences of the employee's conduct?
2. Was the employer's rule or managerial order reasonably related to a) the orderly, efficient and safe operation of its business or operations and b) the work performance that the employer may reasonably expect from the employee?
3. Did the employer, before administering discipline to an employee, make a reasonable effort to discover whether the employee did, in fact, violate a rule or order of management?
4. Was the employer's investigation conducted fairly and objectively?
5. As a result of the investigation, did the Employer obtain substantial evidence or proof that the employee was guilty as charged?
6. Has the employer applied its rules, orders and penalties evenhandedly and without discrimination to all of its employees?
7. Was the degree of discipline administered by the employer, in a particular case reasonably related to a) the seriousness of the employee's proven offense and b) to the record of the employee in his/her service with the employer?

Having thoroughly reviewed the Hearing Record, the Exhibits and the briefs with the supporting documents, I and my Panel colleagues commenced a detailed analysis of the total evidentiary Record. As a result of that analysis, we have found several instances indicating specific problems and difficulties with the Employer's investigative procedures and its evidentiary conclusions.

The Employer's Investigation:

1. From the initial informal complaint by Officer Strauss to Lt. Jason Erickson on July 29 of a problem with Sgt. Keesey through the course of the subsequent informal and formal interviews with both Strauss and Keesey; the entire investigation focused on a specific and limited set of text messages provided by Officer Strauss and set forth in Appendix A. As indicated in Appendix A, I note that when the texts used by the Employer in the course of its investigation are compared to the Log Sheets in Union Exhibit #1⁶ there were a number of additional text messages occurring between Strauss and Keesey during the morning of July 21. These messages occurred after they each left work and after he had allegedly

⁶ The Employer objected to the receipt of Union #1 into the record. Sgt Keesey testified that he cut and pasted the information from his call record in to a word document. The Employer asserted that the best evidence would be the actual call record. The objection was noted, overruled and the Exhibit was received. The Panel is satisfied that the Log sheets do appear to reasonably coincide with the other text records. Although the Log does not include the content of any of the referenced texts, it does provide some insight into the texting history of Sergeant Keesey during the period from about June 26 through about July 26.

solicited her for an outside-of-work "affair" in the POC at the close of their work shift that morning. Based on the content of Union Exhibit #1, it appears that Officer Strauss provided APD with only those texts of her choosing, beginning with the 0956 AM text message from Keesey later that morning.

2. Relatedly, I also note that the Employer, during the course of its investigation, failed to look into the specifics and nature of any potential relationship that may have existed between Strauss and Keesey, prior to July 21. A review of the Keesey's text Log Sheets indicates that during the period from about June 25 through July 20, he exchanged text messages with Officer Strauss about 525 times. Of that number, approximately 240 or about half of their texts occurred during their presumed⁷ non-work time. The log indicates that, during that same time period, Officer Strauss was Keesey's most frequent texting party. Ms. Martinek was a distant second in frequency during that same period. Based upon the Record, it is clear that the Employer never explored the reason for the numerous texts exchanged between Sgt. Keesey and Officer Strauss, at all times of day or night nor investigated the content of those texts between them in the weeks leading up to their situation on July 21.

For whatever reason, based upon the foregoing, I am left to surmise that the Employer conducted something less than an objective, fair and complete investigation of all of the relevant circumstances in this matter.

Perhaps the nature of the problem is best exhibited by the informal, preliminary investigative interview that was conducted with Sgt. Keesey by Deputy Chief Chamberlain and Lt. Malone on August 7th. Apparently neither Chamberlain nor Malone had spoken with Officer Strauss, prior to this interview. However, Chamberlain acknowledged that he had been contacted by Michael Strauss; who briefed him on his perspective regarding Keesey and his wife. Chamberlain and Mr. Strauss were acquainted and familiar with each other through their shared church experiences. According to Chamberlain's memo regarding the conduct of the interview, when Sgt. Keesey denied engaging in any inappropriate solicitation of Officer Strauss for a sexual relationship outside of work and also denied sending the texts to her at 0956 and 1050 AM that same morning, Chamberlain declared his explanations and denials to be "unbelievable". He subsequently called Keesey a liar. By his own recitation in his memo, Chamberlain behaved as though he were an officer interrogating a criminal suspect - whom he knew in his heart was guilty - and now the challenge was to break him down and get a formal confession from him.

⁷ Neither party offered evidence regarding specifically which days Sgt. Keesey and Officer Strauss were working during this time period.

Deputy Chief Chamberlain subsequently made his perceptions and feelings about Sgt. Keeseey and his credibility clearly known to Lt. Roediger, who was being instructed to conduct a formal IA investigation into the situation. Likewise, Chamberlain concurrently made his views known to Chief Everson, who would subsequently be called upon to ultimately make a formal decision on the results of the Internal Affairs investigation. Essentially, Chamberlain was telling Lt. Roediger to conduct a formal IA investigation of the Straus-Keeseey situation, but also made it clear to Roediger that he, Chamberlain, had already determined that Keeseey, as one of the two principals in the matter, was a "liar". I believe that Deputy Chief Chamberlain's instructions and comments to Roediger and Everson are sufficient to raise a serious question about the objectivity and impartiality of the subsequent Internal Affairs investigation. This may also be the reason why the subsequent IA investigation failed to explore the nature and scope of the personal interactions which occurred between Officer Strauss and Sgt. Keeseey, during the period leading up to the sexual harassment complaint made by Officer Strauss.

The Employer's Investigative Conclusions:

In view of the investigative omissions and errors which I noted above, I believe that these problems caused the Employer to subsequently reach certain conclusions in the IA investigation; which are not supported by the record evidence in this matter.

1. As soon as the Employer concluded, at the commencement of the IA investigation, that Sgt. Keeseey was a "liar", it automatically made Officer Strauss' testimony "true". As a result, the Employer credited Strauss with regard to the conversation with Keeseey in the POC on the morning of July 21 where she said he solicited her for an outside-of-work relationship, i.e. an affair. Keeseey categorically denied making any such solicitation, leaving the situation as a classic "He said - she said".
2. In reviewing the totality of Officer Strauss's testimony regarding the POC encounter, as set forth in the record, her recollection, at best, was that Keeseey had said something about being pleased with her work and her work attitude, that he was going to miss working with her as she was now moving to the Day Shift and something to the effect that he was interested in continuing their relationship outside of work. She conceded that she could not recall his exact words, but when asked what she thought he meant, said she said, "...an affair with him."⁸ For his part, Keeseey consistently stated that he did not have a conversation with Strauss near the bulletin board in the POC on

⁸ In her meeting with Lt. Erickson on July 29, Officer Strauss told him the conversation with Keeseey took place at the beginning of the shift, but in her subsequent formal interview on August 13, she said the conversation took place in the POC toward the end of the shift.

the morning of July 21, as alleged by Strauss. He further denies that he ever solicited her for an affair

3. I also note that Officer Strauss doesn't formally report or mention the alleged July 21 POC conversation to responsible APD authorities until July 29th.
4. In the meantime, according to Union Exhibit #1, Strauss and Keesey exchanged some five (5) text messages, immediately after she left work the morning of July 21. Neither Strauss nor Keesey testified regarding these specific messages and their content is unknown. (See Appendix A)

As a result of its Internal Affairs investigation, the Employer concluded that Sgt. Keesey chose to make an overt solicitation of Strauss for an "affair" in the conversation that allegedly took place in the POC on the morning of July 21 since Strauss was leaving for Tennessee later that day and would be reporting to the Day Shift upon her return. According to Officer Strauss, she rebuffed Keesey's solicitation in no uncertain terms and says he immediately apologized. The conversation ends and each individual subsequently completes the work shift and goes home - Strauss to get some sleep and Keesey to drink some beer and work in his garage doing repairs on one of his kid's cars. At about 0956 AM Keesey sent the first "erroneous" text message to Strauss and we well know the subsequent details of that scenario.

I have thoroughly reviewed and contemplated the record evidence. Like the Employer, I have had to draw some inferences; which I believe lead to an alternative view of the evidence and somewhat different conclusions, from those of the Employer, as what occurred in this situation.

Based on the number of texts exchanged between Officer Strauss and Sgt. Keesey noted in Union Exhibit 1, I believe that they had much more communication and/or contact with each other during Officer Strauss's time served on the night shift than testified to by either of them during the investigation and/or at the hearing. I conclude that both Sgt. Keesey and Officer Strauss have not been fully forthcoming with the truth.

I further believe that Officer Strauss and Sgt. Keesey did have some sort of farewell discussion during the course of their last work shift together on July 20-21. However, I credit Sgt. Keesey's denial that he solicited an affair with Officer Strauss during that conversation. The text log in Union Exhibit 1 demonstrates that Sgt. Keesey and Officer Strauss continued to exchange text messages for an hour or so immediately after they left work on the morning of July 21, and after the alleged solicitation and refusal. The existence of those texts contradicts the implied abrupt ending of communication between the two individuals that one would expect had a serious conflict indeed occurred.

Witness testimony is clear that by the end of the work shift the morning of July 21, Strauss was tired and stressed and confused about what time her flight to Tennessee was scheduled to leave, i.e. 7 AM or 7 PM. When she got home, she found her husband and daughter sleeping comfortably and she didn't wake them, but just went to bed. Apparently she left her cell phone in a location where her husband, Michael Strauss saw Sgt. Keesey's text to Officer Strauss come in at 0956 AM. Michael Strauss also saw another message come from Keesey at about 1050 AM. At 1101 AM, Michael confronted Keesey by text as to why Keesey was texting his wife.

Keesey likely suspected that if he openly admitted to Michael Strauss that he was checking on Officer Strauss's well-being, his admission could cause problems for him and for Officer Strauss with her husband. After considering his options for about an hour, Sgt. Keesey texted Michael Strauss an explanation that Keesey's original texts were actually not meant for Officer Strauss, but rather for someone else. He had sent the texts to Officer Strauss by mistake. This was a lie.

At some point when Officer Strauss awakened, her husband likely confronted her about the earlier text messages from Sgt. Keesey. Officer Strauss sent Sgt. Keesey a text at about 12 noon telling him to back off and stop further texting to her.

Clearly, Michael Strauss did not believe Keesey's explanation that the text messages were sent to his wife in error. In fact, he called Keesey a "liar" in a text. Additionally, Officer Strauss testified that Keesey's texts had angered her husband. She testified that she explained to her husband that Keesey had solicited her for an affair during their last shift together but that she had firmly rejected his advances. She testified that she would deal with the situation and then left for Tennessee to spend a week with her father.

Meanwhile, via texts, Sgt. Keesey continued to try to assure Michael Strauss that he wasn't lying, that the text messages he sent to Officer Strauss were indeed sent in error, that he had deleted Officer Strauss's number from his phone and that there would be no further problem with texts from him. On July 22, Michael Strauss forwarded a text to Keesey originally sent by Lora Strauss to her husband in which she reiterated to Michael Strauss that Sgt. Keesey had tried to "hit" on her before she left her last night shift on the morning of July 21.

At 2149 PM on the evening of July 22, apparently while she was in Tennessee assisting her ailing father, Officer Strauss sent Sgt Keesey a text message essentially telling him that because of his earlier text messages to her, her life had become a "living hell".

On July 28, during Officer Strauss's first shift back at work, Sgt. Keesey texted Officer Strauss yet again. This text contradicted Keesey's assurance to Michael

Strauss a week earlier that he had deleted Officer Strauss's number from his phone. The July 28 text from Sgt. Keeseey to Officer Strauss also arrived after Officer Strauss's previous explicit instructions to Keeseey to stop texting her.

Keeseey's text asked "*Are you around?*" Officer Strauss immediately responded by text that she was at work. She then also contacted her husband with her concern about this continuing attention from Sgt. Keeseey. About half an hour later, Michael Strauss texted Keeseey, threatening Keeseey to stop or Michael Strauss would take action.

Officer Strauss subsequently assured her husband that she would take care of the matter and then determined to go ahead and report the matter to APD herself. The following day, July 29, she met with Lt. Erickson and briefed him on the situation with Sgt. Keeseey. Erickson subsequently briefed Chamberlain. According to Chamberlain's testimony, Chamberlain also had a contact or conversation with Michael Strauss about the matter on about July 31.

When Chamberlain and Lt. Malone subsequently met with Sgt. Keeseey in the preliminary investigative interview on August 7, they confronted him with the all of the text messages obtained from Michael and Lora Strauss for the period July 21 though July 28. At that point, Sgt. Keeseey had to choose to either 1) confess that the texts were indeed intended for Officer Strauss, merely a continuation of their communication developed during their work relationship or 2) stand by his previous lie with the hope and expectation that the situation would somehow dissipate, informally blow over or otherwise quietly resolve itself.

We, of course, are well aware of the course of action that Keeseey chose in the interview.

In summary, I believe that the foregoing explanations, regarding the probable fact scenario in this matter, are more accurate, reasonable and in accord with the available record evidence, than those proffered by the Employer's IA investigation.

Sergeant Keeseey's alleged past record of inappropriate behavior toward other female employees and colleagues:

The Employer argues that Sgt. Keeseey has a prior record of inappropriate behavior which support its conclusions with respect to the harassment and/or unwelcome solicitation of a personal or sexual relationship with Officer Strauss. Specifically, it presented three (3) situations; 1) Officer Hobbs and the pushups, 2) the TSA Agent "Lana" matter and, finally, 3) his relationship with Amy Martinek.

I note that none of the situations constituted or involved disciplinary action. Additionally, it appears that in each instance, Sgt. Keeseey, on his own volition,

informally, satisfactorily and in accordance with standard practice, resolved any problems or issues of which he was made aware or otherwise came to his attention. Accordingly, these situations do not appear to have any relevance to this matter.

FINDINGS

Based upon the foregoing analysis and discussion I find as follows:

1. The Employer's investigation was incomplete and flawed.
2. The Employer's investigation failed to fully meet the standards of due process, fairness and objectivity.
3. The Employer has failed to establish by a preponderance of the evidence that its proposed discharge of Sergeant Jeffrey Keeseey is the appropriate disciplinary action in this matter.
4. The Employer has established by a preponderance of the evidence that Sergeant Keeseey engaged in an inappropriate personal relationship with a subordinate female employee. Additionally, Sergeant Keeseey further aggravated the situation by continuing to text Officer Strauss after both she and her husband told him to stop. As a supervisor, Sgt. Keeseey improperly crossed certain boundaries and is held to a higher standard of conduct in that situation. Accordingly, I find that Sergeant Keeseey's conduct violates the Employer's cited policies as alleged.
5. The Employer has established by a preponderance of the record evidence that Sergeant Keeseey knowingly and willfully failed and refused to tell the truth regarding his sending of the two text messages to Officer Strauss at 0956 and 1050 AM on the morning of July 21. Whatever his initial motivations were when he first lied to husband Michael Strauss about misdirected texts, Sgt. Keeseey's continued lying to his superiors cannot be ignored.⁹ Concurrently, I also note that, for her part, and in light of the numerous number of texts exchanged by Officer Strauss and Sgt. Keeseey noted in Union Exhibit 1, Officer Strauss appears to have been somewhat less than fully open, candid and forthright in connection with her testimony in this matter.
6. Beyond those circumstances specifically addressed above, I find no other mitigating circumstances in this matter, which warrant consideration.

CONCLUSIONS

In view of my formal Findings as above, I therefore conclude as follows:

⁹ "Lying" is a complex subject. We are all forced to admit that in the course of daily life, there are circumstances that arise where the full "truth" would be potentially inappropriate and/or damaging or hurtful to personal relationships. In this instance, I shall leave it to the Parties to determine precisely where Keeseey's situation lies.

1. The Employer has failed to present sufficient evidence to establish by a preponderance of the record evidence that its proposed discharge decision should be sustained.
2. However, the Employer has presented sufficient evidence to establish that Sergeant Keesey has engaged in certain misconduct and behaviors in clear violation of established policies, as alleged, and for which formal progressive disciplinary action, short of discharge, is appropriate.

I note that the Employer argues that I and the other Panel members should defer to its proposed discharge decision, if that decision is "reasonable" and fully supported by the totality of the record evidence. I don't disagree with that principle. 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, or in this instance, statutory standards. 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/or abused its discretion, in violation of contractual requirements or other commonly accepted standards. In this instance, I am compelled to find that the quality of the investigation and the general nature of the factual scenario fail to support the proposed discharge decision and, instead, argue for measured progressive discipline.

DECISION

Having concluded above that the Employer lacks sufficient evidence and Cause to support its proposed decision to discharge Sergeant Keesey, that decision is hereby denied.

However, having concluded that Sergeant Keesey has engaged in certain misconduct, sufficient to warrant formal discipline, the following actions shall be taken:

1. Sergeant Keesey shall be recalled to duty by the Employer as soon as practicable.
2. Upon his return to duty, Jeffrey Keesey shall be temporarily suspended and demoted by the Employer from his rank and position as a Sergeant to the next lower rank. This disciplinary suspension in rank shall continue for twelve (12) calendar months. At the conclusion of that period, absent any intervening and relevant disciplinary actions, he shall be reinstated to the rank of Sergeant.

Dated this 1st day of May, 2015 at Minneapolis MN.

/s/ Frank E. Kapsch, Jr.
Frank E. Kapsch, Jr.
Panel Chair and Qualified Neutral

NOTE: The Panel shall retain jurisdiction in this matter for a period of thirty (30) calendar days from the date of this Decision to address any questions from the Parties related thereto.

We concur in this Decision:

/s/ Karen N. Wallin
Karen Wallin, Employer's Designee

/s/ Mark W. Gehan
Mark W. Gehan, Employee-Veteran's Designee

APPENDIX A

The following is a compilation of the text messages occurring between Sgt. Keeseey, Officer Lora Strauss and her husband, Michael, during the period beginning after 0700 AM, the end of the Night Shift, on July 21, 2014 and through July 28. The text messages and message references come from a summary in Lt. Roediger's IA Investigative Report (JT. Exh. C1) and from the text message Log Sheets allegedly obtained by Sgt. Keeseey from his cell phone carrier and entered into the Record as Union Exh. #1 (with Employer Objection noted but overruled). The messages and message references are arranged in chronological order by date and time.

The Text Messages:

Monday, July 21, 0816 AM, from Keeseey to Lora Strauss:
[This message reference comes from the Text Message Log Sheets. There is no evidence in the Record as to the possible content of this message. This is true for each of the subsequent cited message references, where the message content is absent.]

Monday, July 21, 0820 AM, from L. Strauss to Keeseey:

Monday, July 21, 0822 AM, from Keeseey to L. Strauss:

Monday, July 21, 0824 AM, from L. Strauss to Keeseey:

Monday, July 21, 0824 AM, from Keeseey to L. Strauss:

Monday, July 21, 0825 AM, from L. Strauss to Keeseey:

Monday, July 21, 0826 AM, from Keeseey to L. Strauss:

Monday, July 21, 0827 AM, from L. Strauss to Keeseey:

Monday, July 21, 0956 AM, from Keeseey to Lora Strauss:
I want to tell you SOMETHING you may or may want to hear. Call me tonight when you get to TN. I will talk to you later. I hope you slept a while today.

Monday, July 21, 1050 AM, from Keeseey to Lora Strauss:
I miss you already. Talk to you later.

Monday, July 21, 1101 AM, from Michael Strauss to Keeseey:
Would u like to explain the call me tonight because I have SOMETHING to tell you and the I miss you already text to my wife?

Monday, July 21, 1107 AM, from Michael Strauss to Keesey:
Well?

Monday, July 21, 1200 noon, from Lora Strauss to Keesey:
Jeff, these text messages are inappropriate and are unprofessional. Please do not send them to me anymore. You are my boss, that's all. Thank you.

Monday, July 21, 1953 PM, from Keesey to Michael Strauss:
I am assuming this is Strauss' husband. I am sorry about that. That message was not meant for your wife. I accidentally sent it to the wrong person. When I read this message I realized what I did. I just woke up or I would have replied earlier.

Monday, July 21, 2055 PM, from Michael Strauss to Keesey:
OK, for the benefit of the doubt please explain to me the call me from Memphis tonight, I've got SOMETHING to tell you whether you want to hear it or not?

Monday, July 21, 2132 PM, from Keesey to Michael Strauss:
I am assuming this is Strauss's husband. I am sorry about that. That message was not meant for your wife. I accidentally sent it to the wrong person. When I read this message, I realized what I did. I just woke up or would have replied earlier. Sorry.

Separate Text, sent at same date/time as message above, from Keesey to Lora Strauss:
I just forward you message I sent your husband. I did send the message to the wrong person.

Monday, July 21, 2146 PM, from Keesey to Michael Strauss:
Like I said the message was meant for a girl I know named Amy and I wanted her to call me tonight. I don't know why I put Memphis in the message. I was thinking about your wife going there to see her dad earlier in the morning. I know this sounds bad but the message was meant for Amy. I am sorry about sending the message to the wrong person though.

Monday, July 21, 2212 PM, from Michael Strauss to Keesey:
Sorry Jeff I'm not buying it, one msg to the "wrong" person followed by another...I miss you already without checking the recipient? My BS flag is at full staff.

Monday, July 21, 2252 PM, from Keesey to Michael Strauss:

I see what you are saying but it is the truth. I am going to delete her number so it doesn't happen again. Sorry about sending the message to the wrong person.

Tuesday, July 22, 1835 PM, from Michael Strauss to Keeseey:

You're a liar Jeff, here is a text from my wife today regarding you.

'Way back in the beginning I had a conversation with both him and Rindels about expectations where I told both of them that I wanted to come to work and work. I want to be left alone and I don't want any drama. The same talk I had with Sgt Milton on afternoons. Before I left for work the other day Keeseey said to me that he wanted me to stay in nights instead of going to days. I said it is what it is and that I'd rather go to days bc I miss seeing you at home. He made some comment about how he liked me and I knew it was personal. My exact words to him were stop, nothing will happen. I am not interested further more you are my boss. I reminded him of the conversation in the beginning about being left alone. He said well you're pretty. I told him that I am not some trophy the needs to be conquered and that I found his comments to be out of line. At that time day shift came down to the POC and I left and went to the locker room. Otw he sent that you have. I didn't do anything or say anything to lead him on. I was always professional and never out of line. He was. I ended every open ended advance that he had. I was uncomfortable and then I was mad. I'm not some piece of meat. That's all of it. His response to your text was BS and we both know it.'

Are you still going to pretend that you were texting Amy but accidentally sent it to Lora? You are a supervisor and you are way out of line Jeff.

Tuesday, July 22, 2149 PM, from Lora Strauss to Keeseey:

Just so you know, my life has been a living hell thanks to your text messages. This is why I told you I don't need any drama and BS in my life. All I want to do is come to work and be left alone. I don't want to be the topic of conversation and gossip. I am so fucking pissed off.

Wednesday, July 23, 0242 AM, from Keeseey to the Sergeants' Pool Work Phone:

Sergeant Keeseey forwards Mike Strauss' complete text message of Tuesday, July 22, 1835 PM to the Pool Phone.

Monday, July 28, 2112 PM, from Keeseey to Lora Strauss:

You around?

Lora Strauss' immediate text reply:

I'm at work

Monday, July 28, 2157 PM, from Mike Strauss to Keesey:

Apparently your not tracking, quit texting, calling and harassing my wife, she told you to leave her alone, she's not interested in your drama, listen to her or your going to have to deal with me. Are we clear?

Monday, July 28, 2157 PM, from Keesey to Mike Strauss:

Yes