

IN THE MATTER OF ARBITRATION BETWEEN }	
THE CITY OF HASTINGS }	DECISION AND AWARD
(THE CITY) }	OF
and }	ARBITRATOR
TEAMSTERS LOCAL 320 }	
(THE UNION) }	BMS CASE: 06-PA-199

ARBITRATOR: Eugene C. Jensen

DATE AND LOCATION OF HEARING: October 24, 2006
Hastings City Hall
101 Fourth Street East
Hastings, Minnesota 55033-1944

DATE OF FINAL SUBMISSIONS: November 28, 2006

DATE OF AWARD: December 28, 2006

ADVOCATES

For the City:

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For the Union:

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GRIEVANT

R. R., Sergeant

WITNESSES

For the City:

Michael McMenomy, Chief of Police
James Rgnonti, Lieutenant

For the Union:

Nicholas Wasylik, Former Chief of
Police
T. C., Patrol Officer
R. R., GrievantISSUE

Did the City have just cause when it gave the Grievant a two day suspension without pay? And, if not, what shall be the remedy?

JURISDICTION

Pursuant to the rules of the Minnesota Bureau of Mediation Services and the Labor Agreement between the parties, this matter is properly before the Arbitrator.

ARBITRATOR'S NOTE: the following is pertinent contractual language from the January 1, 2004 through December 31, 2005, Labor Agreement:

ARTICLE VII. EMPLOYEE RIGHTS – GRIEVANCE PROCEDURE

7.4. Procedure.

Step 4. A grievance not resolved in Step 3 and appealed to Step 4 by the Union shall be submitted to arbitration subject to the provisions of the Public Employment Labor Relations Act of 1971, as amended. The selection of an arbitrator shall be made in accordance with the “Rules Governing the Arbitration of Grievances”, as established by the Public Employment Relations Board.

7.5 Arbitrator's Authority:

A. The arbitrator shall have no right to amend, modify, nullify, ignore, add to, or subtract from the terms and conditions of this Agreement. The arbitrator shall consider and decide only the specific issue(s) in writing by the Employer and the Union, and shall have no authority to make a decision on any other issue not so submitted.

B. The arbitrator shall be without power to make decisions contrary to, or inconsistent with, or modifying or varying in any way the application of laws, rules, or regulations having the force and effect of law. The arbitrator's decision shall be submitted in writing within thirty (30) days following close of the hearing or the submission of briefs by the parties, whichever is later, unless the parties agree to an extension. The decision shall be binding on both the Employer and the Union and shall be based solely on the arbitrator's interpretation or application of the grievance presented.

ARTICLE X. DISCIPLINE

10.1. The Employer [City] will discipline employees for just cause only. Discipline will be in one or more of the following terms:

- a) Oral reprimand;
- b) Written reprimand;
- c) Suspension
- d) Demotion; or
- e) Discharge

10.2. Suspensions, demotions and discharge will be in written form.

10.3. Written reprimands, notices of suspension, and notices of discharge which are to become part of an employee's personnel file shall be read and acknowledged by signature or [of] the employee. Employees and the Union will receive a copy of such reprimands and/or notices.

10.4. Employees may examine their own individual personnel files at reasonable times under the direct supervision of the Employer.

10.5. Discharges will be preceded by a five (5) day suspension without pay.

10.6. Employees will not be questioned concerning an investigation of disciplinary action unless the employee has been given an opportunity to have a Union representative present at such questioning.

- 10.7. Grievances relating to this Article shall be initiated by the Union in Step 3 of the grievance procedure under Article VII.

JOINT EXHIBITS

1. The January 1, 2004 through December 31, 2005, Labor Agreement between the parties. (JE#1)
2. May 4, 2005, disciplinary letter. (JE#2)
3. May 12, 2005, Grievance filed on behalf of the Grievant by the Union. (JE#3)
4. May 19, 2005, Grievance Reply letter from Chief McMenemy to Greg Burns, Minnesota Teamsters Local 320. (JE#4)
5. May 24, 2005, letter from Greg Burns, Teamsters Local No. 320 Business Agent, to Chief Mike McMenemy. (JE#5)

ARBITRATOR'S NOTE: This letter appealed the grievance at issue in this arbitration to the next step of the grievance procedure.

6. Policies and Regulations of the Hastings Police Department. (JE#6)

ARBITRATOR'S NOTE: The following are excerpts from the Policies and Regulations; it is appropriate that they be part of the record:

1.01.01 POLICY

This manual is issued by authority of the chief of police. It contains the policies and regulations of this department.

1.01.02 PURPOSE

The policies and regulations are created to direct all department personnel in carrying out their duties and responsibilities. Violation of these policies or regulations may be grounds for disciplinary action, up to and including, discharge.

1.01.03 KNOWLEDGE OF CONTENTS

Each department employee is responsible to know all policies and regulations in this manual.

1.01.04 ISSUANCE OF MANUAL

Each employee must acknowledge in writing that they have received a copy of this manual. The employee must read this manual within 30 days after receiving it. At the end of 30 days, the employee must sign an additional form, indicating they have read the manual and understood it. . . .

7.01.14 GENERAL RULES OF CONDUCT

Subd. 1 Compliance With Orders.

Employee[s] will promptly obey any lawful orders of a superior. Any employee who refuses to obey a lawful order will be considered insubordinate and may be subject to disciplinary action, up to and including, discharge.

8.01.13 COMPLAINT INVESTIGATION – FORMAL

Subd. 1

A formal investigation consists of the steps taken by the personnel complaint investigator assigned to investigate the personnel complaint and prepare the final investigative report. The formal investigation takes place after the initial and preliminary investigations are complete. . . .

Subd. 2

A formal complaint investigation may be conducted only [by] the chief of police, a lieutenant or their specific designee. . . .

Approved by: Michael McMenemy, Chief of Police

Effective date: 10-24-03

CITY'S EXHIBITS

1. July 28, 1999, memo from then Captain McMenemy, to "All Officers, and All Hastings Police Department Personnel," regarding the investigation of an officer. (CE#1)

2. February 9, 2000, memo from Chief McMenemy to "All Officers," regarding an investigation of the same officer mentioned in City Exhibit 1 above. (CE#2)
3. February 2, 2000, memo from Chief Mike McMenemy to Sgt. R. R. regarding "Disciplinary Notice & Formal Statement." (CE#3)
4. February 25, 2000, memo from Mayor Mike Werner to Sgt. R. R. regarding an "Oral Reprimand." (CE#4)
5. May 19, 2000, memo from Chief Mike McMenemy to Lt. Kegley, Sgt. Galland, Sgt. Rgnonti, Sgt. R., Sgt. S. Scharfe, Sgt. V. Scharfe, Sgt. Wuollet, regarding "Staff Meeting Followup." (CE#5)
6. June 22, 2000, memo from Chief McMenemy and Lt. Kegly, to Sgt. Wuollet, Sgt. R., Sgt. Galland, Sgt. S. Scharfe, Sgt. V. Scharfe, regarding "Speed Monitor Sign." (CE#6)
7. October 17, 2000, memo from Chief Mike McMenemy and Lt. Joe Kegley, to Sgt. R. R., regarding "Community Patrol Log Book." (CE#7)
8. October 17, 2000, memo from Chief Mike McMenemy, to Sgt. R. R., regarding "Inappropriate Comment." (CE#8)
9. October 23, 2000, memo from Sgt. R., to Chief McMenemy, regarding "Clarification to Uniform Discussion." (CE#9)
10. October 23, 2000, memo from Chief Mike McMenemy, to Sgt. R., regarding "Follow Up of Uniform Discussion." (CE#10)
11. October 23, 2000, memo from Chief McMenemy, to Sgt. R., regarding "Inappropriate Vacation Allowance – 10/22/00." (CE#11)

UNION'S EXHIBIT

The Union introduced one exhibit to support its case: Sergeant R. R.'s January through December 2005, performance evaluation. (UE#1)

CITY'S WITNESSES

Michael McMenemy, Chief of Police, testified to the following:

- Employed by the City since 1980; seven years as Chief.

- Sergeants may receive an initial complaint regarding another officer, however, investigations of complaints are conducted by the Chief or his lieutenant[s].
- On April 22, 2005, a formal investigation took place regarding Officer C., in accordance with laws and policies.
- The Grievant was the day supervisor that day, and the Lieutenant Rgnonti told the Grievant not to talk to Officer C. about the investigation.
- On April 28, 2005, at a supervisors' meeting, a discussion took place about the complaint against Officer C..
- Lieutenant Rgnonti began the discussion and the Grievant interrupted and told the supervisors that he had talked to Officer C..
- The Grievant was told that contacting Officer C. was "not right," and that he "shouldn't have contacted him."
- All of the assembled supervisors, including the Grievant, thought that the proposed discipline of Officer C. was "appropriate."
- On April 29, 2005, the Grievant came into the Chief's office and said, he 'wanted to change his opinion, and didn't want to be part of it.'
- The Chief asked the Grievant if he had contacted Officer C., and the Grievant said, 'no.'
- The discussion became more animated and their voices rose to the point that "Lieutenant Rgnonti came in to calm things down."
- He (the Chief) said that the Grievant told him, 'you don't have the balls to do it yourself.' [in reference to meting out discipline]
- The Grievant then admitted that he went to Officer C.'s house the night before -- for an unspecified amount of time.
- The Grievant is part of the administrative staff, and was told, following the April 28, 2005, meeting not to discuss this with anyone, especially Officer C.. The Chief was aware that the Grievant and Officer C. were friends.
- The Chief and the lieutenants met immediately following the April 29, 2005, incident and agreed that the Grievant had violated policies, and that "no further investigation was necessary."

- Two policy violations were cited in May 4, 2005, Notice of Discipline Action (JE#2): 1) 7.01.14, following directives of the administration, and 2) 8.01.13, interfering with a complaint investigation. In addition, he had concerns about the Grievant not initially telling the truth about his contact with Officer C. on the night of April 28, 2005.
- In the grievance (JE#3), the Union disagreed with the “on-going pattern” statement in the notice of discipline.
- The Chief responded to the Union’s disagreement in his May 19, 2005, letter to Greg Burns (JE#4). The Chief reviewed the information contained in Joint Exhibit 4.
- The Grievant “does not embrace our philosophy” and there is a “pattern of ignoring our philosophy.”

James Rgnonti, Hastings Police Lieutenant, testified to the following:

- First hired as an officer in 1987; has been a lieutenant since 2005.
- The investigation of Officer C. took place on April 22, 2005, and he had the Grievant (who was on duty) stop by his (Rgnonti’s) home that same day. He wanted him to “keep an eye on Officer C.,” since he had just been through the stress of the investigation.
- At the April 28, 2005, sergeant’s [supervisors’] meeting, the Grievant said he had spoken to Officer C., and he wanted to bring up some information. The Grievant went on to say there was an ‘area of the investigation [they] hadn’t looked into.’
- He and Lieutenant Kegly had been assigned to do the investigation of the complaint against Officer C., and they had conducted the investigation according to the law and policies. Appropriate warnings were given, and Officer C. had union representation.
- Following the April 28, 2005, sergeants meeting, he and the Chief confronted the Grievant, and told him, “do not contact Officer C. regarding the matter.”
- On April 29, 2005 (the next morning), he heard an argument going on between the Grievant and the Chief in the Chief’s office. He entered the office and closed the door, as to not disturb others.
- The Grievant wanted to “retract his previous day’s position.”

- Rgnonti asked the Grievant if he had contacted Officer C., and the Grievant responded, 'yes.'
- The Grievant asked if he was under investigation.
- The Grievant told them that he had gone to Officer C.'s home about using a tow strap.
- His concern about the April 28, 2005, sergeant's meeting was not that the Grievant had brought the issue up. His concern was that he had contacted Officer C. regarding the investigation prior to the meeting.

UNION'S WITNESSES

Nicholas Wasylik, former Chief of Hastings Police, testified to the following:

- Began as a patrolman in Hastings in 1972; retired as Hastings' Chief of Police in 2000.
- Recognized the Grievant as a highly qualified and proficient officer who, in addition, brought his valuable paramedic skills to the department.
- In 1999 he witnessed an argument between the Grievant and the current Chief, Mike McMenemy. He felt that the argument could have led to a physical conflict, had he not intervened.
- He described Chief McMenemy's style of management as more formal than his.

T. C., Hastings Police Officer, testified to the following:

- Hastings Police Officer since October of 2000.
- On April 28, 2005, the Grievant called him about borrowing a tow-strap. Later the Grievant drove up in his squad car to pick it up.
- He ran outside barefoot and gave the Grievant the tow-strap.
- They had a brief discussion about his "situation."
- He had been warned by his union to not talk to management, including the Grievant, about his situation.

R. R., the Grievant, testified to the following:

- Began his career with the Hastings Police Department in 1990.
- In 1999 he and his supervisor, Mike McMenemy (the current chief), got into a heated argument regarding an internal investigation. He thought the internal investigation was “going ahead of the criminal investigation.” McMenemy wanted to fight and took off his badge.
- He acknowledged that he had received several corrective memos. He felt they were not unusual, and he made adjustments to address those concerns.
- In regard to the C. investigation, he came by information that traffic tickets given to a young man were allegedly being fixed by his aunt who worked at the county government center. This information came through Officer C.’s fiancée, who works with the young man’s aunt.
- He felt that this information was important, and that it should be made known. He called Officer C. prior to the April 28, 2006, sergeant’s meeting and asked him if he had his permission to share this information at the meeting. C. said, ‘go ahead and bring it up.’
- When the topic came up at the meeting, he said, “I have information that maybe relevant to this case.” He then shared the information with the group.
- He believed that the lieutenants who conducted the investigation did not know about this information.
- He thought that it was appropriate to share the information he had regarding the C. issue in the sergeants’ meeting.
- He was clearly aware of the fact that he wasn’t supposed to talk to Officer C. about the investigation following the meeting. He said that this was made clear in the meeting and when he met with Chief McMenemy and Lieutenant Rgnonti after the meeting.
- He was never under the impression that he could not talk to Officer C. about matters not related to the investigation: they were friends, and they would often talk.
- He called Officer C. and asked him about a tow strap; he wanted to assist a friend in towing a car. C. did have one, and later he went to his home to pick it up.

- He met Officer C. in front of his house and acquired the tow strap. Officer C. asked him if he had brought the issue up. He told C. that he had. C. asked him if he thought he would lose his job, and he said that he did not think so, based on his knowledge of the department's disciplinary history.
- He talked to another sergeant that same evening, and he also had concerns about the vote at the sergeant's meeting.
- He went to see the Chief the following morning (April 29, 2005), and told him that he had serious problems with the "round table" approval of discipline that occurred the previous day. He indicated that he wanted to change his vote: he wanted to abstain. He said that the Chief told him that it was a 'done deal,' and that he had already voted.
- The Chief asked him if he had talked to T. (Officer C.) about this. The Grievant told the chief, "no."
- He said that the Chief was quite emotional, and the Grievant thought that the sergeant he talked to the night before must have already left a message with the Chief about his intention to abstain.
- Lieutenant Rgnonti intervened and tried to calm things down. He asked the Grievant if he had talked to C. and the Grievant responded, "yes."
- He did not feel that he had done anything wrong by borrowing the tow strap, and he indicated that he had never actively involved himself in the investigation of Officer C..

CITY'S ARGUMENT

In the City's Post-Hearing Brief (CPHB) the City argues:

The Union failed to deal with the basis for the Grievant's two day suspension outlined in detail by the Chief of Police in his May 4, 2005 "Notice of Discipline Action" in the Union's written grievance and in its arbitration presentation to the Arbitrator. The Union also failed to reply to the Chief's May 19, 2005 extensively documented reply to the Union's grievance. (CPHB p. 1)

The evidence presented at the hearing in this matter fully supports the outline of the serious violations by the Grievant of Hastings Police Department Policies and his insubordination outlined in detail by the chief of Police in his May 4, 2005 "Notice of Discipline Action." (CPHB p. 4)

The amount of discipline administered in this case by the Chief for the multiple infractions of Department Policies by the Grievant is less than could be justified for such violations. . . .

The two-day suspension for the Grievant's violations of Policies and insubordination is a minimal penalty for such serious infractions and should be upheld. (CPHB p. 4)

In essence, the City argues that the Grievant wrongfully involved himself in an internal investigation; ignored a clear directive of his superiors when he contacted the subject of the investigation; has a history of not complying with supervisory directives; and received less discipline than was warranted.

UNION'S ARGUMENT

In the Union's Post-Hearing Brief (UPHB), the Union argues:

The City failed to perform an investigation, as required by law, prior to suspending Sgt. R. R. This failure shows that the City lacked Just Cause to take disciplinary action against Sgt. R.. Further, the City failed to carry its burden to affirmatively show that Sgt. R. engaged in interference with an investigation and insubordination. (UPHB p. 5)

I. THE CITY OF HASTINGS DISCIPLINED SGT. R. WITHOUT JUST CAUSE.

a. The City failed to perform any investigation in violation of Sgt. R.'s due process rights. (UPHB p. 10)
. . . .

b. The City has failed to show that any wrongdoing occurred. (UPHB p. 13)

II. A TWO DAY SUSPENSION IS OVERLY HARSH FOR THE INFRACTION OF WHICH SGT. R. IS ACCUSED (UPHB p. 16). . . .

a. Even if the Arbitrator determines discipline is warranted, a two (2) day suspension without pay is overly harsh. (UPHB p. 16)

b. The City's action in this instance falls outside the principles of progressive discipline. (UPHB p. 18)

In essence, the Union argues: the Grievant is an exemplary employee; the City did not conduct a proper investigation; the Grievant did not do what the city alleges he did; and, the discipline was overly harsh, even if he had violated the policy and/or committed the insubordination.

DISCUSSION AND DECISION

For the most part, the facts in this matter are not in dispute. Instead, it is the interpretation of those facts that divides the parties. The Chief, in his letter of discipline, stated:

You advised that you [the Grievant] contacted this officer to solicit any information or items concerning this investigation that you could relay at the supervisor's meeting on behalf of the officer . . . [and] you acknowledge you contacted this officer and attempted to become involved in this investigation . . . [and this was] an attempt on your part to undermine the formal investigation process and shows disrespect for the integrity of the investigative Lieutenants, and system in place for handling these formal investigations. (JE#2 pp. 1-2)

The Grievant testified that he acquired what he felt was relevant information through an informal discussion with the Officer in question. He stated that he called the Officer on April 28, 2005, to gain his permission to discuss what he already knew, not to solicit additional information. He said that he did not involve himself in the investigation, and that any information he had regarding Officer C.'s situation came to him voluntarily through C..

The Chief, later in the letter, stated:

On Thursday, April 28th during the supervisory meeting I advised the group of supervisors in the room, including yourself after you started sharing information that you had obtained details from this officer, that this issue would not be discussed outside the meeting and no one was to have any contact with this officer about this topic. After the meeting ended I again specifically reminded you in front of Lieutenant Rgnonti and other sergeants that you were not to speak to this officer about what was discussed in this meeting or anything to do with this investigation or disposition of the investigation. (JE#2 p. 2)

The Grievant testified that he called C. and asked if he had a "tow strap" he could borrow. He later dropped by the Officer's house and picked it up. A brief conversation took place that included two questions by C. that were directed at the Grievant: 1) had he brought up the information mentioned above at the

meeting that day, and 2) whether or not the Grievant felt he would be fired? The Grievant told C. that he had brought up the information, and, based on his experiences with the department, he did not feel he would be fired.

The Chief, later in the letter, stated:

On Friday morning April 29th you came into my office and advised that you wished to change your thoughts and opinions on the disposition and complaint investigation you had expressed at the meeting on Thursday April 28th. This resulted in a heated and vocally loud exchange between the two of us. During this exchange I asked and basically suspected that you had talked to the officer that this discipline issue was about the previous night. You stated you had not talked to him the previous night and had just thought about it yourself during the night and wanted to change your thoughts and opinions on the issue. Lieutenant Rgnonti overheard the vocal exchange and came into the office and the three of us had a closed door meeting about this issue. During the meeting, and following conversation, you did advise that you in fact had gone to the patrol officer's home the previous evening, Thursday night, and did in fact discuss this investigative complaint issue with the officer. When asked you refused to say how long your conversation was with this officer on Thursday night but it does not matter whether the conversation was ten seconds, ten minutes or longer; the fact remains that you specifically violated a verbal order not to discuss this issue with the officer or anybody else. (JE#2 pp. 2-3)

The Grievant testified that he changed his mind about his position on the meeting independent of his brief meeting with C.. He stated that he talked to another sergeant, who was like-minded, and he suspected that the Chief was upset because the other sergeant left him a voice mail expressing his own dissatisfaction with the process. When asked if he had discussed the meeting with the C., he initially said, "no," because that was not the purpose of their meeting. He later responded to a more global question from Lieutenant Rgnonti, in which Rgnonti asked if he had spoken to C., rather than, did you speak to him about the investigation? The Grievant then said, "yes."

The Chief, later in the letter, stated:

This insubordination exhibited by you is an ongoing pattern of disrespect and failure on your part to recognize the authority of your superior officers. This insubordination is an ongoing behavior problem exhibited by you which you have previously been disciplined for and can no longer be tolerated. (JE#2 p. 3)

The Grievant testified it was not unusual for police personnel to receive corrective memos, and that he always tried to address and correct those concerns. He had received a verbal reprimand in 2000 for his actions in regard to another internal investigation, however, he had never been disciplined since that time.

The Arbitrator will pose, ponder, and answer the following questions before deciding the appropriateness of the discipline:

1. Did the Grievant actively involve himself in the investigation prior to the sergeants' meeting on April 28, 2005?

The Grievant had information related to the investigation because Officer C. decided to confide in a friend, not because the Grievant was attempting to conduct an independent investigation.

In addition, there is insufficient evidence to support the claim that the Grievant was attempting to investigate the issue when he called the Officer prior to the sergeants' meeting. The Grievant was aware of the information and thought it might be pertinent; he was merely seeking permission to share it.

Finally, if the Chief and lieutenants were attempting, "to provide correct and proper information to the supervisory staff on these types of complaints, as well as obtain feedback and input regarding the disposition of these types of complaints" (JE#2 p. 1), it was reasonable to assume that this was the time to bring it up. [the Arbitrator underlined the text for emphasis]

2. Was the Grievant insubordinate when he contacted the Officer on the night of April 28, 2005?

The Grievant used poor judgment when he put himself in a position of appearing to defy the order of his Chief and Lieutenant Rgnonti. It may only have been the tow strap he was interested in; however, the Grievant should have anticipated C. would ask questions. He intentionally placed himself in a compromising position that did result in a discussion, albeit brief, about the meeting.

3. Did the Grievant lie to the Chief regarding his contact with the Officer?

The Grievant's response to the Chief's question was misleading at best. Even if the reason for his "change of heart" regarding the previous day's meeting was not at all based on his brief discussion with Officer C., the Grievant should have immediately acknowledged the contact. His false response, however, is mitigated somewhat by his subsequent response to Lieutenant Rgnonti.

4. Were the actions of the Grievant consistent with an "ongoing pattern of disrespect and failure . . . to recognize the authority of [his] superior

officers,” (JE#2 p. 3) and should that pattern, if present, represent a foundation for the discipline at bar?

The City, in JE#4, identified several instances of what it believed to be examples of the Grievant “not buying” the management team’s philosophy. Many of these were in the form of “Conversation/Observation Records” that identified concerns that needed attention. Despite their numbers, no evidence was introduced regarding discipline over these matters. The only discipline introduced was in regard to the Grievant’s interference in an investigation that occurred in early 2000.

Although the Grievant is highly skilled Officer, who is held in high regard by many of his fellow officers and the community, he is also an employee who regularly challenges authority (for whatever reason). The Grievant and the Chief have a volatile relationship, and it appears, no matter what the topic, they communicate with harsh words (both written and verbal).

Despite the Grievant’s history of receiving corrective notices from his superiors, there is little, if any, relationship between them and the discipline at issue in this arbitration. And, although the previous discipline for interfering with another internal investigation is right on point, it occurred several years ago. I do, however, believe that the presence of that discipline is significant in that the Grievant clearly knew the City was sensitive about any interference in a complaint investigation.

5. Should the City have conducted an investigation before it disciplined the Grievant?

I do not agree with the Union’s contention that the City is required to, in all cases, conduct an investigation. Sometimes the observed actions of an employee can satisfy the requirement of an investigation, without further interrogatives. For example, if management witnesses an employee assaulting his/her supervisor without provocation, that witness alone is probably sufficient. In this case the City decided that there was no need for further investigation because the Grievant admitted he talked to Officer C. after the sergeants’ meeting.

The Chief and/or the lieutenants, however, made some additional assumptions: 1) the Grievant had inappropriately involved himself in the investigation prior to the sergeants’ meeting; 2) the Grievant was attempting to undermine the Chief and the lieutenants’ authority; 3) the Grievant’s main purpose in talking to Officer C. following the meeting was to discuss the investigation; and 4) the Grievant intentionally lied to him on the morning of April 29, 2005. A further investigation might not have changed the mindset of the Chief and the lieutenants in regard to the discipline, however, it would have removed them from the heat of the moment. And, although I will not throw out the entire suspension, based on the

City's decision to not further investigate, I believe that it would have been prudent to do so

After carefully reviewing all of the evidence, I find that the City did have just cause to discipline the Grievant: 1) the Grievant intentionally contacted Officer C. following the April 28, 2005, sergeants' meeting; and 2) he misled Chief McMenemy on April 29, 2005. The evidence, however, does not reasonably support the City's claim that the Grievant interfered in a formal complaint investigation prior to the "tow strap" conversation.

AWARD

The two day suspension given to the Grievant on May 4, 2005, shall be reduced to a one day suspension, and eleven (11) hours of compensation and all related benefits shall be returned to the Grievant.

Respectfully submitted this 28th day of December, 2006.

Eugene C. Jensen, Neutral Arbitrator