

IN THE MATTER OF THE ARBITRATION BETWEEN

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Law Enforcement Labor Services, Inc., Local 249,  
Grievant,

and

City of Hastings, Minnesota

Employer.

**OPINION AND AWARD**

Grievance of LELS, Inc.,  
Local 249 (Doffing Termination)

BMS Case No. 07-PA-1127

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ARBITRATOR:

Janice K. Frankman,  
Attorney at Law

DATE OF AWARD:

January 25, 2008

HEARING SITE:

City of Hastings Courthouse  
101 Fourth Street East  
Hastings MN 55033-1955

HEARING DATES:

November 7, 8 and 9, 2007

RECORD CLOSED:

December 17, 2007

REPRESENTING THE UNION:

Marylee Abrams, General Counsel  
Law Enforcement Labor Services, Inc.  
327 York Avenue  
St. Paul MN 55130-4090

REPRESENTING THE EMPLOYER:

Cyrus F. Smythe, Consultant  
Labor Relations Associates  
18955 Maple Lane  
Deephaven MN 55331

## **JURISDICTION**

The hearing in this matter was held on November 7, 8 and 9, 2007. The Arbitrator was selected to serve pursuant to the parties' collective bargaining agreement and the procedures of the Minnesota State Bureau of Mediation Services. The parties submitted contract issues to arbitration. Both parties were afforded a full and fair opportunity to present their cases. Witnesses were sworn and their testimony was subject to cross-examination. Post-hearing Briefs were received from the parties on December 17, 2007, when the record closed and the matter was taken under advisement. At the request of the Arbitrator due to a death in her family, the parties agreed to extend the 30 day deadline from the date of closing of the record for issuance of this Opinion and Award.

## **ISSUE**

The parties agreed at the hearing to the following statement of the issue:

Was the termination of Officer Rene Doffing for just cause? If not, what is the appropriate remedy?

## **BACKGROUND AND SUMMARY OF THE EVIDENCE**

Rene Doffing ("Grievant" "Officer Doffing" "Doffing") became a full-time patrol officer for the City of Hastings Police Department on January 1, 1994. He has received favorable performance evaluations and commendations for his service. He is a lifelong active resident of Hastings and is seen by many as an asset in his community. He is married and a father who plays an active role in the lives of his children.

Officer Doffing received discipline in 1994, 2001 and early 2007. On March 28, 2007, he was placed on restricted duty in the Police Department pending investigation of an incident in Hastings on March 26, 2007. He remained on restricted duty until May 11, 2007, when he was suspended without pay for five days pending a termination hearing before the Hastings Police Civil Service Commission.<sup>1</sup>

The Mayor of the City had filed charges against him and recommended his termination from employment. Following a public hearing conducted by the Police Civil Service Commission on May 18, Officer Doffing was notified that the charges had been substantiated and the recommendation had been adopted.<sup>2</sup> The Union filed two Grievances on his behalf on May 24 and June 6, 2007. It objected to his termination and to the City's cancellation of his P.O.S.T. license fee in violation of the parties' Collective Bargaining Agreement.

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<sup>1</sup> The parties' Collective Bargaining Agreement requires a five day suspension prior to termination.

<sup>2</sup> Officer Doffing waived his right to attend the hearing preserving his right to grievance arbitration under the CBA. He expressed his concern with regard to the confidentiality of his employment records.

## The March 26, 2007, Incident

Officer Doffing was working the afternoon shift on March 25 and 26, 2007. He was taking a "last lap" around the City beginning around 2:00 a.m. before his shift ended at 3:00 a.m. His route included a pass by the Coliseum Bar, an establishment that has experienced frequent police activity.<sup>3</sup> As he approached the Bar at about 2:18 a.m., he saw a crowd outside the door. When he drove into the Bar parking lot, one young man had another pinned up against a car. The men were later identified as Brandon Johnson and Michael Huffman. Officer Doffing pulled up to the car but did not get out of his squad. The door to his squad car was ajar, and he asked the individual who had been pinned down, Michael Huffman, what was going on. The other man, Brandon Johnson, left the scene as Officer Doffing approached. Doffing was told that Johnson wanted to fight but that Officer Doffing's arrival prevented a fight from starting. He was told that the two men worked together. Doffing asked Huffman to stay where he was; he said he wanted to talk to Johnson, and he would return.

Officer Doffing proceeded to the rear of the bar parking lot where he had seen Johnson go. He announced that he was a police officer and that he wanted to talk with him. Johnson left running and Officer Doffing followed him in his squad car. Johnson ran from the Bar parking lot between West 18<sup>th</sup> and 19<sup>th</sup> Streets just off of Highway 61, to West 17<sup>th</sup> Street where he attempted to scale a fence by Cooper School. He fell back then got up and continued to run from Officer Doffing. Officer Doffing attempted to call dispatch from his hand held equipment but could not get a response. He continued to look for Johnson and found him in front of a home on West 18<sup>th</sup> Street, crouched down behind a tree. Johnson had his back to Officer Doffing who left his car and approached him telling him that he was police and that he wanted to talk with him but Johnson continued to run. He crossed over into the Freedom Service Station parking lot facing east on Highway 61 between 17<sup>th</sup> and 18<sup>th</sup> Streets West. Officer Doffing reached dispatch and advised that he was pursuing an intoxicated white man in a white tee shirt. Sergeant Valerie Scharfe, Officer Doffing's supervisor, responded to the dispatch. There were several dispatch exchanges, some of which are unintelligible. Officer Doffing acknowledged Sgt. Scharfe's communication advising that he could not read her. He had referred to the pursuit beginning at the Coliseum Bar.

Officer Doffing was stopped in the Freedom Station parking lot when he saw Johnson approach Highway 61. Doffing saw Sgt. Scharfe approaching southbound on Highway 61 with emergency lights and siren. He saw Johnson begin to cross Highway 61, a four lane highway, stumble and fall on the median and nearly get hit by another car traveling north. He put on his lights and crossed from the service station lot over to the northbound lane of Highway 61. He made a shallow u-turn then proceeded over the curb into a creamery parking lot at the corner of 18<sup>th</sup> Street East and Highway 61, in the direction Johnson was now moving at a trot. He wanted to get ahead of Johnson and prevent him from entering another residential area beyond the creamery lot.

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<sup>3</sup> Officer Doffing and several others from the Hastings Police Department had responded the night before to an incident at the Coliseum Bar which resulted in the arrest of an individual for disorderly conduct.

The creamery lot was in poor repair and rutted. Officer Doffing drove through two large puddles, and his squad car fishtailed as he drove parallel and to the right of Johnson. He saw him begin to falter and fall to the right toward his car. He lost sight of him just before he heard a thump as Johnson made contact with the squad car breaking a side light on the left front fender. He rolled up onto the upper left corner of the car's windshield and came to rest about 19 feet from where he had made contact with the car. Officer Doffing had veered right and came to rest about 22 feet from the apparent point of contact of Johnson and his car.

He called dispatch for an ambulance and left his car to administer first aid to Johnson. Sgt. Scharfe entered the creamery parking lot from the northbound lane of Highway 61, driving southbound against traffic, just behind Johnson and Officer Doffing. She parked her squad car behind Doffing's car and joined Officer Doffing to administer first aid. The siren on her squad car can be heard on Officer Doffing's dispatch reporting the accident and requesting an ambulance. Other officers including Lt. Rgnonti were dispatched to the scene. Officer Doffing was relieved by another Officer. He contacted the Union, and he was taken by Lt. Rgnonti to the Police Station to file a report and to provide a urine specimen for drug testing. The State Highway Patrol was also contacted. State Trooper Koehler was briefed by Sgt. Scharfe. He provided a written report dated March 28, and he briefed State Trooper Langford who was called to the scene to provide an accident reconstruction report.

Johnson was conscious as he was being treated in the creamery parking lot. He had a laceration on his left knee which was exposed by cutting his jeans. He flirted with Sgt. Scharfe telling her she was "cute" and asking her name. He was taken to the hospital for xrays and other diagnostic testing. Hastings Police Officers reported, from the hospital to the State Troopers at the scene of the accident, that he was intoxicated and uncooperative and that he had refused treatment of his knee. Johnson was not interviewed by anyone until Lt. Rgnonti spoke with him on the telephone in the afternoon of March 29.

Officer Doffing was told that he could report to work the day after the incident. He was placed on restricted duty by Memo dated March 30, 2007, from Chief of Police McMenemy, effective April 2, 2007. He remained on restricted duty until May 11, when he was placed on unpaid suspension for 5 days pending the termination hearing before the Police Civil Service Commission which was held on May 18, 2007. He was notified of his termination following the hearing.

### Reports of the Incident

Several reports were completed immediately following the incident. They were supplemented by transcribed dictation. The hearing record includes forms completed by Officer Doffing, Sgt. Scharfe and Lt. Rgnonti as well as their narrative reports. It also includes reports filed by State Patrol Officers Koehler and Langford. Sgt. Scharfe wrote a letter to Police Chief McMenemy and Lt. Rgnonti expressing her concern about the incident and seeking internal investigation of it. Lt. Rgnonti filed an internal complaint

and was responsible for investigation of the incident. The investigation of the matter and disciplinary action taken by the City are addressed separately below as captioned. The following paragraphs highlight each set of reports:

Doffing. Shortly after the incident, Officer Doffing completed three forms including an Initial Complaint Report, Field Use-of-Force Report and a Minnesota Pursuit Report Form. He reported an incident that began at 2:18 a.m. and ended at 2:22 a.m. He noted potential charges of disturbance of the peace, disorderly conduct and fleeing an officer and that the suspect had become a danger to himself and others. He reported his squad speed at the time the suspect ran into his car at an estimated 10 MPH. His narrative description of the incident, apparently provided a day or two after the incident, is included in the record as transcribed and on a CD as he dictated it.<sup>4</sup> He reported that he got out of his squad to approach the “aggressive male” in the bar parking lot and that he shouted to him several times as he followed him through the neighborhood; that he “aired that the male was intoxicated and running from (him) at 18<sup>th</sup> Street; white male, white t-shirt”; and that he activated emergency lights after watching the suspect nearly get hit by a car on Highway 61. He reported, “I attempted to get ahead of the suspect when he turned and fell towards the front of my squad car. I turned to the right in attempt to avoid trying to hit the suspect. The suspect ran into the left front fender of my squad and hit my windshield.” City Exhibit 1

Scharfe. Sgt. Scharfe completed a Supervisor’s Field Use-of-Force Report on March 26, 2007. She wrote, “I observed Officer Doffing pursue an intoxicated male from his squad car. Officer Doffing used his squad car to make contact with suspect who then rolled over the hood of the vehicle and broke the winshield.” (sic) City Exhibit 5. In her dictated narrative, Sgt. Scharfe reported hearing Doffing’s radio call and responding to him with her location and asking what the suspect was wanted for. She reported that Doffing responded that she was not readable on the radio. She reported seeing the suspect cross the highway and fall, that she put on emergency lights and siren to travel against traffic and into the creamery lot entering “almost simultaneously” with the suspect and Officer Doffing. She reported, “As I drove into the lot I observed Officer Doffing accelerate after clearing the curb and as the suspect was running straight east of the parking lot Officer Doffing’s squad car made contact with the suspect at a slight angle. The suspect was struck in the leg by Officer Doffing’s squad in the front left fender area. The suspect then rolled onto the hood of the vehicle and then rolled off onto the ground.” She reported that the suspect was obviously intoxicated with slurred speech and asking officers questions. She noted one

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<sup>4</sup> This hearing record includes several undated documents and record entries which identify the date of the incident but not the date of the entry.

laceration on his left knee and no other “obvious injuries”. She noted her calls to the Sheriff’s Department and the State Patrol for assistance. She reported being told by Officer Doffing that he had witnessed the suspect pushing another person against a wall at the Coliseum Bar and that she sent another officer to the Bar but no one was there. City Exhibit 1

By letter dated March 28, Sgt. Scharfe advised the Chief and the Lt. that she had reviewed Officer Doffing’s reports of the incident. She detailed her concerns with his handling of the matter and the facts that she believed supported her conclusions that the matter should be reviewed for disciplinary action based upon violation of department policy relative to excessive use of force, exceeding scope of authority, use of video equipment and poor judgment.

Rgnonti. Lt. Rgnonti completed a Police Department Personnel Complaint – Internal Complaint form on March 27, 2007. He identified Brandon Johnson as Co-complainant. He wrote, “Officer Doffing was driving his squad toward a citizen who was running away from him. Officer Doffing claimed he was in pursuit of this person who ran through a parking lot. Officer Doffing’s vehicle struck this person causing damage to his squad and minor injuries to the citizen.” City Exhibit 5. Lt. Rgnonti’s narrative of the incident reports his involvement beginning at 2:50 a.m. on March 26, at the scene and his contact with the State Patrol Officers on March 28, and with Brandon Johnson on March 29. He reported that he responded to a call from Sgt. Scharfe who reported that Officer Doffing had hit a pedestrian. He reported that “According to Sgt. Scharfe, Officer Doffing then drove over the curb, towards this person, hitting him and knocking him to the ground.” City Exhibit 1. He reported taking photos and having Sgt. Scharfe pull the video tape from Officer Doffing’s squad. He noted that the tape was full and had not recorded earlier traffic stops or the accident. He reported that two State Patrol Officers visited the police station on March 28, to learn if the computer in Officer Doffing’s squad had been activated during the collision and determined that it had not. Finally, he reported a conversation with Brandon Johnson on March 29, which was recorded and is a part of this hearing record as an 11 page transcript. Mr. Johnson told Lt. Rgnonti that he did not know much about what happened but that he had reported the incident to his probation officer and was placed on probation hold for 24 hours. He recalled coming out of the bar and holding down his buddy with whom he works who was getting rowdy. He thought he had fallen a couple of times, reported having stitches in his knee and that he had been taken away on a stretcher. He told the Lt. that he was on probation for fleeing police and auto theft, and he expressed concern about being charged by the Hastings PD. Lt Rgnonti told him that he might be looking at a disorderly conduct but that nothing had been determined and it would depend on what his probation officer said. Brandon Johnson continued to express concern referring to

attendance at AA meetings and to not having completed temporary work for a new employer and wanting to keep his job. He told the Lt. his friend's name and where he might be reached.

Koehler. State Trooper Koehler arrived at the scene of the accident about 20 minutes after it occurred. He was told while enroute that "an individual who was fleeing police officers, on foot, was struck by a Hastings PD squad car." He was briefed by Sgt. Scharfe. Officer Doffing had been advised by legal counsel not to discuss the incident with him. Koehler and Officer Doffing spoke that evening when Doffing read his statement concerning the incident to him. Koehler reported that "Officer Doffing stated that he accelerated across US HWY 61 and into the parking lot, in an attempt to position his squad in Johnson's path of travel. Officer Doffing explained that as he neared Johnson, Johnson suddenly changed his direction of travel and began to run south. When Johnson did so, he ran directly into the front, left of Officer Doffing's squad car and was struck. Officer Doffing stated that he attempted to steer, very hard, to the right, to avoid striking Johnson." City Exhibit 2.

Langford. State Trooper Langford provided his Crash Reconstruction Report in collaboration with Investigating Trooper Koehler. He responded to a call received about one hour after the accident and was at the scene by 4:15 a.m. His ten page report is undated, and the record does not reflect to whom it was sent or when it was received. The Report provides background information and details the area description, weather environment, the collision scene description and post-collision vehicle inspection. Photographs and forensic mapping are included in the report. He reported minor injuries to Brandon Johnson and none to Officer Doffing. He concluded that "Officer Doffing was accelerating towards Johnson, causing the squad to fishtail. Just prior to impact the squad turned slightly to the left, towards Johnson, who Doffing said appeared to be intoxicated and had already fallen in front of traffic on northbound highway 61. The left front of the squad struck Johnson who rolled onto the hood of the Ford and struck the windshield causing it to shatter. Johnson was propelled forward approximately 19 feet and came to rest on his back. Immediately upon impact the Ford turned 70 degrees clockwise and came to rest approximately 27 feet from the area of impact facing east." City Exhibit 2. Langford expressed his opinions relative to the area of impact and speed. He advised that a speed evaluation would be highly speculative but that Officer's Doffing's statement that he was traveling only 10 MPH when Johnson struck the squad was highly unlikely, that he was more than likely traveling at 20 MPH. He expressed his opinion that "This collision occurred as a result of the combination of Johnson fleeing from Police while intoxicated and the manner in which Officer Doffing was operating his squad car." and "With the information that was available to Officer Doffing at the time of this collision it is my opinion that he operated

his squad in a manner which was likely to endanger the physical safety of Johnson.” City Exhibit 2

Investigation; Discipline; Criminal Investigation

Lt. Rgnonti interviewed Officer Doffing in the presence of Union Counsel on April 16, 2007. A 41 page transcript of the interview and his 7 page summary of it are included in the hearing record. He had a conversation with Brandon Johnson as reported above at page 6 on March 29. He also spoke with Johnson on April 26, and May 8. He interviewed Michael Huffman, the other individual involved at the Coliseum Bar on May 1. The record does not include Lt. Rgnonti’s report of the investigation. He advised Officer Doffing and Union counsel, Marylee Abrams that it was his job only to gather the facts and to provide a report to the Chief. Ms. Abrams had inquired as to the purpose for particular questions he was asking Officer Doffing, noting that the tone and nature of his questions suggested predisposition with regard to the incident. For example, she asked if the Department believed that Officer Doffing should have simply left the Coliseum Bar without taking further action. Lt. Rgnonti declined to respond to her questions.

Lt. Rgnonti’s conversation with Brandon Johnson on April 26, was to follow up with him concerning his injuries and to advise him that the matter was being handled by his probation officer. Rgnonti commented that Johnson’s injuries likely reminded him of his drinking. The May 8, conversation was recorded. It apparently was initiated by Johnson who asked whether the City had any insurance that could help with his medical bills because his knee was bothering him and he needed medical attention. He said the sutures had healed but he had a slight limp referring to the injury to his left knee which had been treated after the March 26, incident. He also mentioned that he had lost some time at work because of it. Lt. Rgnonti told him that he would look into whether there was insurance coverage. Chief McMenemy received a faxed transmission from a Senior Claims Adjustor for the League of Cities Insurance Trust on November 2, 2007, which detailed payments made to or on behalf of Johnson under the City’s no fault personal injury protection coverage. The fax also included a Release signed by Johnson on June 4, 2007, acknowledging payment of \$11,000. in settlement of any and all liability claims.

Lt. Rgnonti reported his brief conversation with Michael Huffman. He indicated that Huffman had been difficult to contact, that he works at the same company as Johnson, that Huffman told him he had been very intoxicated and did not remember much about the events of March 26. He reported that Huffman recalled the officer driving into the parking lot, advising him that he had a sober cab for the evening and “wrestling around” with Johnson who walked away when Doffing arrived.

Lt. Rgnonti’s interview of Officer Doffing on April 16, 2007, followed pre-prepared questions. Officer Doffing signed Garrity and Tennessen Warnings. He was asked for detail of the incident beginning in the Coliseum parking lot. Officer Doffing verbally traced his path from there to the creamery lot where the incident ended. He referred to

“hopping” out of his car in the Coliseum lot, at Cooper School and in front of the home where Johnson was hiding behind a tree, each time calling out that he was a police officer and wanted to talk with him. In detailing his conversation with Huffman, he said he never got fully out of his car but had his door open. He described Johnson falling into the northbound lane of Highway 61 and what occurred after that;

And there's a little blue car comin', she hits her brakes, just misses runnin' this guy over. I come outta the lot, hit the turn lane, now there's another car right there at 18<sup>th</sup>. I click over to the first lights to go through. This guy's now up runnin' into that parking lot at the Polka Dot Dairy. I go into that lot and I'm tryin' to parallel him as he's running along that row of semi trailers, I'm gonna try to get down to the end to stop him 'cause if he gets around that building and into the residential area I figured he's gonna be gone. And as I'm just entering into that parking lot area he looks over this right should, does a stumble fall, I swerved to the right, he hits my fender, his head hits my windshield, he goes down. I hopped out, he's laying there, he moans, I hit my trunk button, called for dispatch, they ...10-, they couldn't understand me. I had my handheld, reached in and grabbed my microphone and I said I need, uh, I need an ambulance and a, um, county car to my location, 18<sup>th</sup> and Vermillion, I have a suspect hit. I grabbed my bag outta the trunk. I ran and gloved up, (inaudible) stabilization asked him his name “Are you hurt anywhere?” Um, I got the cot outta the ambulance and, um, they had enough people there, I stood back then. I was relieved from any portion thereof. City Exhibit 9 (pages 4 and 5 of 41 page transcript)

The interview circled back to various aspects of the incident. Officer Doffing said when he turned north on Highway 61, he expected to see Johnson on the highway but he had gotten up and was running into the lot. He described hitting a rut and braking and said he thought he was going 10 or 15 MPH having gone over the curb from a dead stop. He did not look at his speedometer. He admitted to not checking his video before his shift and to having received the Chief's directive about videos. They discussed whether he thought he was dealing with a disturbance, an argument or a fight. Officer Doffing told the Lt. that Sgt. Scharfe never spoke with him about the incident and that he was not angry with Johnson. Officer Doffing told Lt. Rgnonti he thought he had walked 20 or 30 feet from his car to the back of the Coliseum lot to talk to Johnson. When shown a 1 ½” by 2” video tape taken at the Coliseum which Lt. Rgnonti pointed out showed him circling around in his car and driving out of the Coliseum lot, he deferred to it denying several times that he lied to Lt. Rgnonti. He said he told him what he remembered and agreed to accept what the tape showed.<sup>5</sup> Lt. Rgnonti accused him of lying and warned him that there could be bigger problems if he were not being honest. He told him he had caught him lying. The exchange including some interjection by Ms.

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<sup>5</sup> A DVD labeled from the Coliseum lot on 3/26/07 is a part of the hearing record. No foundation was provided for the production of the tape which is very difficult to view and distinguish activity without someone directing the viewer.

Abrams is reported beginning at page 30 and ending at page 39 of the transcript. Officer Doffing closed by saying:

That I feel I'm an honest man. I . . . I'm a good person in the community, family man, I have answered these, 'er, to the best of my recollection. I have not, this was my first major traumatic event, other than the fire, and I said, I've tried to, a month ago, I, tryin' to answer your questions and put things together and I tried answering these as truthful as I can to the best of my knowledge. I never intentionally lied to you throughout this report or throughout your questioning. Everything I answered is the, the way I can recall the traumatic experience. City Exhibit 9 (page 39 of 41 page transcript)

Mayor Paul Hicks advised Officer Doffing by an undated letter that he had carefully reviewed the facts of the incident on March 26, and was considering terminating his employment. He invited Officer Doffing and his Union representative to meet with him on April 26, in his office before he made his decision. He advised that he had asked the Police Chief and Lieutenants Kegley and Rgnonti to sit in on the meeting. The record does not reflect Lt. Kegley's role in this matter. Officer Doffing and Ken Pilcher, Union Business Agent attended the 13 minute meeting. The hearing record includes a 6 page transcript of the meeting and Lt. Rgnonti's summary of it including a note that indicates the Mayor's letter notice and invitation had issued two days earlier.

At the April 26, meeting, Officer Doffing was asked to address the incident. He was not asked any question; he was directed to address the incident and tell them anything he wanted them to know. He advised that he had provided detail to Lt. Rgnonti who told him that he did not believe him. He expressed his desire to remain in his position and addressed his commitment to and involvement in the community. The Chief agreed with him that he was cooperative in doing whatever he had been asked to do when he had been disciplined. He discussed the stress that the matter had put on his family. Mr. Pilcher encouraged review of the entire matter and all of the detail in context, referring to his 28 year experience as a police officer and knowledge of other cases.

Chief McMenemy sent a letter to Officer Doffing dated May 7, captioned "Notice of Suspension". He noted that the parties' Collective Bargaining Agreement provides that discharges will be preceded by a five day suspension without pay. He wrote: "I understand Mayor Hicks has filed charges with the Hastings Police Civil Service commission and recommended the commission terminate your employment with the City of Hastings." A five page undated document captioned "CHARGES AGAINST OFFICER RENE DOFFING" includes reference to Department Policy numbers and excerpts from Policy provisions in support of eight charges. A ninth "charge" refers to prior discipline which supports the termination.

A May 7, 2007, Communication Directive and undated Notice of Hearing set May 18, 2007, as the date for hearing regarding the Mayor's recommendation to terminate Officer Doffing. Following the hearing, Judy Gilbert, Secretary of the City of Hastings

Police Civil Service Commission sent Officer Doffing a letter captioned "Termination" advising him that the Commission had substantiated the Mayor's charges and adopted his recommendation to terminate his employment. A document captioned "For Immediate Release" was issued the same day from the Office of the Chief of Police and the City Attorney.

Chief McMenemy, Lt. Rgnonti and Sgt. Scharfe testified at this hearing that they supported the termination. Chief McMenemy expressed his opinion that there was no other choice, that Officer's inability to control his anger had resulted in the accident and his earlier breaches of Department policy supported his termination. He stated that anger management counseling was not working and the City could not risk further liability.<sup>6</sup> Daniel Fluegel, City Attorney and Donald Davis, former Director of Public Safety and Chief of Police for several jurisdictions and former Commissioner of the Minnesota Department of Public Safety offered their opinion that Officer Doffing's dishonesty would disqualify him from service as a police officer, that any testimony he might be asked to provide in any case in the future would be impeached by the facts of the March 26, incident which would be required to be disclosed to opposing counsel.

#### Prior Discipline; CBA Provisions

Officer Doffing received a five day suspension without pay during his probationary period with the Police Department in 1994. He was off-duty when he became involved in a confrontation with some boys playing hockey. He was disciplined by Chief Wasylik on December 16, 1994, for his conduct and was directed to a psychological examination to determine whether there were issues that caused him to be unfit for duty. He remained suspended with pay pending the outcome of the exam. He was returned to full duty status on December 30, 1994, and he passed probation.

Nicholas Wasylik was Chief of the the Hastings PD until 2000. Officer Doffing performed well while Chief Wasylik was in charge experiencing "normal speed bumps of being an officer". He attested to Doffing's knowledge of and commitment to the community and his belief that he is a truthful person. He teaches emergency response driving and described customary responses in emergencies including tunnel vision, auditory exclusion and "false memory" resulting in faulty recall of facts.

Chief McMenemy issued a written reprimand to Officer Doffing on November 29, 2001. He was cited for conduct unbecoming an officer based upon an intemperate exchange with a City employee who had done some work on his property. The Chief requested that he participate in psychological testing, evaluation and counseling to address concerns he had with Officer Doffing's handling of "anger and frustrations". City Exhibit 16.

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<sup>6</sup> Lt. Rgnonti testified that \$25,000. had been spent for the injuries caused by the March 26, incident and that more expenses were expected. Brandon Johnson was not called to testify at this hearing. The record includes a summary statement of payments made by the League of Cities insurance for medical expenses, loss of wages and an \$11,000 lump sum liability payment to Mr. Johnson.

Officer Doffing received a one day suspension on January 17, 2007, following receipt of a community complaint in early December, 2006, concerning an incident which occurred when he was on-duty and addressing a personal matter involving his daughter. The Complaint alleged that Officer Doffing had yelled and verbally harassed a young woman who Officer Doffing believed was harassing his daughter. Chief McMenemy admonished him and required him "to participate in discussions, counseling and mediation to deal with the anger and stress issues that we all encounter." Officer Doffing agreed to meet with Pastor Bzoskie, Hastings PD Chaplain. The Chief wrote as follows with regard to reporting of his work with the Chaplain and his hope for the future:

. . . . Pastor Bzoskie will provide documentation in written form to this administration that you are participating in meetings, counseling and discussion with him in working on these problems. Particular details are not required in the documentations, just a summary that you have participated and are working with Pastor Bzoskie on these issues of concern for you and the City of Hastings.

I will conclude by thanking you for your openness and willingness to work with this department in handling this situation in a fair and reasonable manner. Hopefully you will recognize that this type of behavior in the public's eye cannot be tolerated, especially for non-police related matters. Hopefully there will be no future incidents of this type of behavior from you which would result in further progressive disciplinary action and steps taken. City Exhibit 18

Chaplain Bzoskie reported to the Chief on January 20, 2007, that Officer Doffing had enrolled in an anger management and conflict resolution class. He set out three objectives and advised that there would be workbook work and attendance at counseling sessions. By Memo dated April 16, 2007, the Chaplain reported to the Chief, Officer Doffing's progress on the three objectives including a desire to learn and apply skills learned in workbooks and counseling sessions and demonstration of a desire to control anger. He wrote, "He is sincere and willing to do what is necessary to learn new skills in managing his anger." Union Exhibit 7

The parties' Collective Bargaining Agreement does not provide limit the life of or provide for expungement of earlier discipline. It sets out a progressive discipline continuum and a requirement that any discipline or discharge issue only for just cause.

#### Additional Evidence and Testimony

#### Character Witnesses

Nine witnesses testified on behalf of Officer Doffing describing their relationship with him, the length of time and how they know him, his reputation in the community, his manner as a community member and professional and their view of him as an honest

and trustworthy person. They included Brian Schommer, Insurance Agent and Police Reserve Volunteer; Retired Chief Wasylik; Pastor and Police Chaplain Bzoskie; Daniel Massman, Owner of radio station KBWY; Lily Murr, Hastings Police Patrol Officer; Calvin Ruedy, Hastings Public Works Street Superintendent; Ruth Bremer, family friend and employer of Officer Doffing's mother; Jeffrey Hernlem, Opus Corporation Field Supervisor; and James Yanz, Owner of the Bier Stube and Doffing employer. Each of these people spoke very positively about Officer Doffing. Some have known him his entire life, and others only for the period of time they have worked with him as a police officer. Their relationships are personal and professional and some include Officer Doffing's family of origin and his children. The witnesses described professional, social and community situations in which they interact with Officer Doffing. None of them had any knowledge of poor relationships in the community and none reported instances of dishonesty or untruthfulness. None had personal knowledge of the March 26, incident.

### Performance Evaluations

The hearing record includes performance evaluations received by Officer Doffing through his tenure with the Police Department. Comments and commendations are also included in the packet which is Union Exhibit 8. There was no testimony with regard to the Exhibit. The most recent evaluation was provided by Sgt. Scharfe on March 4, 2007. It covers calendar year 2006, and addresses several functional accountabilities and work methods and skills. Of the nine areas addressed, Sgt. Scharfe gave Officer Doffing highest marks in conformance with policies and procedures, problem solving and judgment, work management and self development. She noted that he had run for Sheriff. Her overall rating of him as partially meeting satisfactory standards was lower than it has been in recent years when he was evaluated by others. The only area where she found him to fail to meet satisfactory standards was officer fitness and appearance.

### Impact of Termination

Officer Doffing and his family have been negatively impacted by this matter in a variety of ways. They have been placed in an uncomfortable spotlight in the community and are asked many questions. Their house has been refinanced and their financial well-being has been affected. His children are college-bound, and there are many additional expenses that are difficult to cover. He was invited to return to work at the Bier Stube, a local pub, where he worked long ago as a chef, work that he enjoyed but does not choose to do. He wants to be returned to his position with the Police Department.

### Other Department Discipline

The record reflects that others in the Hastings Police Department are under investigation for failure to maintain the video equipment in their squad cars and that Officer Doffing's supervisor has been disciplined for her conduct in the workplace, for

failure to follow the chain of command and for reporting in sick then participating in a sporting event.

## **POSITION OF THE CITY**

The City argues it had just cause for suspending without pay and then discharging the Grievant pursuant to the parties' Collective Bargaining Agreement. It argues that he is not fit for duty having violated several provisions of Department policy as detailed in the Mayor's charges and because he apparently is mentally disabled due to his inability to accurately remember all of the detail of the incident on March 26, 2007. It argues that a police officer who suffers memory loss cannot fulfill his professional responsibilities, and it urges Officer Doffing to seek disability benefits instead of reinstatement to his position.

The City argues that Officer Doffing failed to tell the truth during questioning by a State Trooper and in a police investigation when he said that he recalled leaving his car to talk to individuals at the Coliseum Bar and when he provided a written report that Brandon Johnson had hit his squad. As a result, the City asserts that Officer Doffing could never be called to testify because his testimony would be subject to impeachment and would lack credibility based upon the facts of this case which would need to be revealed to defense counsel.

The City argues that the manner in which he operated his vehicle on March 26, constituted excessive use of force and that he intentionally hit the young man he was pursuing. It argues that he was illegally in pursuit of him making matters worse. It asserts that his inability to control his temper resulted in his intentional act resulting in injury and significant liability to the City. It asserts that his earlier discipline supports this conclusion and the action the City took to terminate his employment.

## **POSITION OF THE UNION**

The Union seeks reinstatement of Rene Doffing to his position and appropriate discipline for his failure to check his video tape equipment as directed by the Chief of Police. It recognizes that he admitted to failing to follow Department Policy and the Chief's directive with regard to checking video equipment frequently to assure its proper operation. The two Grievances it filed seek a make whole remedy including payment of his 2007 P.O.S.T. license fee.

The Union argues that the City did not have just cause to terminate the Grievant's long-term position with the Police Department and that it did not meet a higher burden of proof required to support its decision to discharge him based on matters of moral turpitude. It refers particularly to the City's assertions that the Grievant was untruthful, a very serious charge with lifelong negative impact. It argues that a finding of dishonesty in support of termination requires demonstration of intention to deceive one's employer. It asserts that the Grievant had no reason to lie about the matters upon which the City has focused. It argues that his false memory occurred with

stress and is explainable and understandable in this case which was extraordinarily traumatic. The Union has provided an article authored by Law Professor and Arbitrator Christine VerPloeg which addresses the accuracy of witness recall. It points to Officer Doffing's consistent assertion that he had recollected the facts of the incident to the best of his ability under persistent questioning by Lt. Rgnonti and at this hearing. It argues that there has been no evidence of earlier dishonesty or failure to be truthful.

The Union urges consideration of the testimony of the many positive character witnesses who appeared on Officer Doffing's behalf. It points to his active role in his community through volunteer and community organization work and work in his children's schools and coaching their sports teams. It points to positive performance evaluations and commendations which he has received. The Union recognizes Officer Doffing's earlier discipline and willing participation in anger management classes. It argues that the proper focus here is upon progressive discipline and rehabilitation.

The Union argues that the City's conclusion that Officer Doffing intentionally ran into the individual he was pursuing with his squad car is outrageous and without proof or support. It seeks an award which returns him to his work and makes him whole.

## **OPINION AND FINDINGS**

This is a very serious matter which has been given very serious consideration. The record made over three full days of hearing has been carefully studied and much of the detail of it has been reported above to support the conclusions which have been reached in issuing this Award. The City indicated that it has sent the matter out for criminal investigation, underscoring the gravity of the impact which this incident could have beyond the loss of a position and a career. The Union is correct that this matter calls for very close and careful scrutiny of all of the facts. The nature of the charges made against Officer Doffing require the City to meet a higher standard of proof than in other discipline in discharge cases. He has been charged with dishonesty and an intentional act to "run over" a pedestrian. These are matters of moral turpitude and criminal conduct. Officer Doffing has also been charged with failure to follow the law and essential police practices in carrying out his work.

The City has failed to demonstrate just cause for its termination of Officer Doffing. It has demonstrated cause for lesser discipline based upon two of its nine charges. Officer Doffing and his Union have admitted that he is due some discipline. He violated Department policy when he did not check his video tape for two days, a policy which the Department admitted has been violated by others. This case demonstrates the importance and usefulness of the policy. It would have been very helpful to have a video recording of this incident from Officer Doffing's perspective.

The most persuasive evidence and testimony in this case which supports additional discipline are the reports and testimony of the State Troopers called to the scene of the accident. Notwithstanding the fact that their work was initially premised upon briefing by Sgt. Scharfe, their findings are well-supported. There is no evidence

that Sgt. Scharfe's reports were closely questioned or challenged. State Trooper Langford offered his opinion that "With the information that was available to Officer Doffing at the time of this collision . . . he operated his squad in a manner which was likely to endanger the physical safety of Johnson." His opinion is supported by the entire record made at hearing and substantiates Charge 4 made against Officer Doffing that he "unnecessarily engaged in pursuit in an unsafe manner and without due regard for the public safety."

Three preliminary observations are required before discussing the other charges and why they have not been substantiated. First, this record does not provide evidence of a full and fair investigation of the incident. Officer Doffing was the only individual subject to interrogation or even close questioning with regard to the facts. Lt. Rgnonti, who was at the scene of the accident and filed a report, was also the investigator. In his conversations with Brandon Johnson, he did not attempt to elicit any detail of the incident from him. Johnson made no mention of Officer Doffing's squad, and he was not asked about the pursuit through the neighborhood. The transcripts of his conversations with him speak for themselves. As noted above, there is no evidence that Sgt. Scharfe, the only eye witness to the accident, was questioned.<sup>7</sup> Lt. Rgnonti first spoke with Michael Huffman, the first individual with whom Officer Doffing had contact at the Coliseum, on May 1, more than one month after the incident and several days after Officer Doffing met with the Mayor, the Chief and Lt. Rgnonti to address his possible termination. Although Lt. Rgnonti advised Officer Doffing and Ms. Abrams that he would prepare a report for the Chief following his investigation, this hearing record does not include a report of the investigation. It is unclear when his investigation was completed. The record does not reflect what other steps he took or what other evidence he considered.

Second, the record does not include the decision-making process in the Mayor's office or before the Police Civil Service Commission. It appears that Officer Doffing learned of the Mayor's decision to file charges against him and to set the date for a Civil Service Commission hearing at the same time that the matter was made public. The record does not reflect when or how the five page Charge document was created or delivered to Officer Doffing. Chief McMenemy's suspension letter included his statement that he understood that the Mayor had filed charges against him. The fact that the suspension letter was issued before there had been a hearing confirms predetermination of Officer Doffing's discharge. It appears that Officer Doffing was denied due process notwithstanding his decision to waive his right to attend the Civil Service hearing.

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<sup>7</sup> Lt. Rgnonti and the State Troopers reported Sgt. Scharfe's characterization of the collision to them. Sgt. Scharfe's narratives summarized above at pages 5 and 6 reflect inaccuracy in her recall of the incident. She reported that Doffing told her one man was holding another against a wall at the Coliseum. She testified at hearing that she thought Johnson was dead and that she spoke with Doffing about the incident at the scene. Doffing's testimony that she never spoke with him about the incident is unrefuted. She could not recall the incident at the Coliseum the night before this incident which was reported to have been attended by all officers on duty including her..

Third, this record does not include the Department Policy Manual from which excerpts were taken in support of the Charges against Officer Doffing. In addition, the Charges set out by the City do not include the factual basis for them. The record does not include illuminating testimony concerning police practices with regard to probable cause determinations, pursuit of a fleeing suspect and use of deadly force, including appropriate consideration of a vehicle as an instrument of deadly force.

The following is a summary of each of the charges, unsubstantiated at this hearing, and the Arbitrator's conclusions with regard to them:

Charge 1. Officer Doffing engaged in the unauthorized use of deadly force on March 26, 2007.

The City's Charge does not include the definition of "deadly force". Minn. Stat. §609.066, Subdivision 1 provides the following definition:

For the purposes of this section, 'deadly force' means force which the actor uses with the purpose of causing, or which the actor should reasonably know creates a substantial risk of causing, death or great bodily harm. The intentional discharge of a firearm, other than a firearm loaded with less lethal munitions and used by a peace officer within the scope of official duties, in the direction of another person, or at a vehicle in which another person is believed to be, constitutes deadly force. 'Less lethal munitions' means projectiles which are designed to stun, temporarily incapacitate, or cause temporary discomfort to a person. . . .

There has been no showing that Officer Doffing's use of his vehicle was intended as an instrument of force as defined by statute or that the intent of the statute is to include vehicles as an instrument of deadly force. The record does not support a conclusion that Officer Doffing intentionally hit a pedestrian.

Charge 2. Even assuming Officer Doffing had a legitimate reason to pursue this individual, he failed to follow the required force continuum by going from Step 1, Officer Presence to Step 6, Deadly Force, without just cause.

The continuum of force set out in the City's Charge does not contemplate use of a police squad as an instrument of force. Officer Doffing provided verbal direction to Mr. Johnson to stop because he wanted to talk with him. It is unreasonable to construe Officer Doffing's driving of his squad as "employing force" within the meaning of the Department's policy.

Charge 3. Officer Doffing used force, i.e., deadly force, when no use of force was authorized under the policy.

While the use of force provisions relied upon by the City arguably do not apply in this case, it is noted that Officer Doffing may have had authority to use some force with

a fleeing suspect. This record does not support a conclusion that Officer Doffing was proceeding "without authority".

Charge 5a. Officer Doffing knowingly gave false statements during an official Hastings Police Department internal investigation into the incident of March 26, 2007.

Officer Doffing's testimony, including the sworn statement he provided after signing Tennesen and Garrity warnings was credible and does not support the City's Charge that he knowingly gave any false statement during Lt. Rgnonti's investigation of the incident or at any time during the pendency of this matter.

Charge 5b. Officer Doffing discredited himself and the Police Department by knowingly making false statements when submitting an official police report and during an official department internal investigation of the March 26, 2007 incident.

There is no evidence to support a conclusion that Officer Doffing knowingly made any false statement in any report or statement which he has provided during the pendency of this matter. There has been no evidence to support a conclusion that he has discredited himself, the Department or the profession by any statement which he made during the pendency of this matter

Charge 6. Officer Doffing knowingly made false statements when submitting an official police report.

There is no evidence to support a conclusion that Officer Doffing conducted himself in a manner when filing official police reports in this matter which detracts from the public's faith in the integrity of the criminal justice system.

Charge 7. Officer Doffing exceeded his authority on March 26, 2007, by knowingly attempting to restrict the freedom of an individual without the required articulable suspicion or probable cause as required by the constitutions of the United States and Minnesota.

The City has provided no evidence or testimony to support its Charge that Officer Doffing lacked probable cause to pursue Brandon Johnson. Lt. Rgnonti suggested to Mr. Johnson that he might be subject to a disorderly conduct citation which supports a conclusion that he believed Officer Doffing had probable cause to pursue him.

The Union has presented a credible case. Officer Doffing and the Union have acknowledged his earlier discipline and participation in anger management and conflict resolution counseling. They have effectively addressed the issues raised in this case through credible evidence and testimony. The breadth and depth of the testimony of the nine witnesses who testified on his behalf is noteworthy. Although their testimony was not lengthy, it was meaningful and credible. Each had his or her own perspective

and made no attempt to embellish or exaggerate a genuine endorsement of Officer Doffing in ways relevant to this case. They collectively met the City's negative characterization of Officer Doffing.

Noteworthy with regard to the City's case was its apparent disregard of its Chaplain's work with and report of Officer Doffing's progress in counseling; its failure to meet the testimony of its former Chief of Police particularly with regard to his work in training emergency responders; its failure to accurately address progressive discipline *vis-a-vis* Officer Doffing's discipline record; and a lack of evidence or testimony with regard to critical police practices to illuminate and support its charges based upon them with regard to probable cause and pursuit of fleeing suspects.

Nonetheless, this record supports serious discipline. If Officer Doffing's only offense were his admitted failure to check and report the need to replace his squad video, a written warning would have been appropriate notwithstanding his one day suspension in January, 2007. However, the State Troopers' Reports support much more serious discipline because of the manner in which he drove his vehicle given the specific circumstances of this case. It is appropriate to reinstate Officer Doffing and impose lesser discipline, a 30 day suspension, which will become a part of his personnel record. Because he was terminated effective May 18, and had been suspended for five days before he was terminated, he has served his suspension without pay. He was terminated without just cause and should be made whole for any resulting loss of pay or benefits and without loss of seniority.

### **AWARD**

Rene Doffing shall be reinstated to his position as a Patrol Officer for the Hastings Police Department. The discipline imposed by the City following the incident on March 26, 2007, shall be reduced to a 30 day Suspension without pay. Officer Doffing shall be made whole by payment of backpay and benefits including payment of his P.O.S.T. license fee and without loss of seniority or benefits. His personnel record shall be expunged consistent with applicable law to remove all reference to Charges made against him which have not been substantiated in this Opinion and Award and to remove all reference to the termination of his position by the City. The Arbitrator shall retain jurisdiction of this matter for a period of 60 days to address any issue which may arise in the implementation of this Opinion and Award.

Dated: January 25, 2008

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Janice K. Frankman, Attorney at Law  
Arbitrator