

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE CITY COUNCIL OF THE CITY OF SAINT PAUL

In the Matter of the
Proposed Termination of
the Appointment of
Stephen F. Conroy.

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge George A. Beck on Monday, April 23, 1990 at 9:00 A.M. in Room 202, City Hall Annex, in the City of St. Paul, Minnesota. The hearing continued through May 1, 1990. The record in this matter closed on the date of the filing of the last written memorandum from a party on June 5, 1990.

Phillip B. Byrne, Assistant City Attorney, 647 City Hall, St. Paul, Minnesota 55102, appeared on behalf of the City of St. Paul. Earl P. Gray, Attorney at Law, Suite 1300, 386 North Wabasha, St. Paul, Minnesota 55102, appeared on behalf of the Respondent, Stephen F. Conroy.

This Report is a recommendation, Not a final decision. Pursuant to 12.12.4 of the City Charter, the final determination in this matter will be made by the St. Paul City Council. The Charter states that a fire chief may be removed for cause by the Mayor with the approval of the Council by five (5) votes after hearing before the Council. -The parties may contact Albert B. Olson, City Clerk, St. Paul City Council, 386 City Hall, St. Paul, Minnesota 55102, to ascertain the procedure for filing exceptions to this Report or presenting argument to the City Council.

STATEMENT OF ISSUE

The issue to be determined in this proceeding is whether or not cause exists for the removal of Stephen F. Conroy as fire chief of the City of St. Paul.

Based upon all of the proceedings herein, the
Administrative Law Judge
makes the following:

FINDINGS OF FACT

Appointment of the Fire Chief

1. Stephen F. Conroy has been the fire chief of the City of St. Paul since 1966. He was appointed by Mayor Thomas Byrne. He first joined the St. Paul Fire Department as a firefighter on June 16, 1950. (T. 1264). He was appointed a captain on June 16, 1958. He has been reappointed as fire chief ten times by Mayors Byrne, McCarty, Cohen and Latimer. (T. 1264 , Ex . E-2) . Mr. Conroy is currently serving a six-year term as fire chief which expires on January 1, 1992. He is 62 years old. (T. 1262).

2 Mayor George Latimer first proposed a six-year term for the fire chief in 1981. (Ex. 5; T. 148). At that time the term of the fire chief was two years. His intent was to separate the fire chief from the political process but not to insulate the fire chief from accountability to the mayor for the everyday running of the department. (T. 149, 151-52). On April 21, 1981 the St. Paul City Council recommended to the St. Paul Charter Commission that it act favorably on a six-year term for the fire chief. (Ex. 5). The St. Paul Charter Commission approved the proposal in 1984. (T. 187). The Commission did not intend to remove the fire chief from accountability to the mayor for the day-to-day operation of the Department. (T. 188).

3. A six-year term for the fire chief was established by the unanimous action of the St. Paul City Council in an ordinance adopted on January 15, 1985 and approved by the Mayor on the following day (Ex. 7). The City Council's action conformed the term of the fire chief to that of the police chief and provided that the fire chief, like the police chief, could be removed only for cause after the first year of the term. By letter dated December 16, 1985, Mayor Latimer advised the City Council that Stephen Conroy was beginning the first six-year term as fire chief on January 1, 1986. (Ex. A).

Events Leading to the Proposed Termination

4. During 1988 Chief Conroy submitted his resignation to Mayor Latimer. HE? planned to retire in the summer of 1989, but then changed his mind. (T. 172; Ex. E-2). Mayor Latimer told him he was making a mistake by not resigning and urged him to reconsider. (T. 173). Mayor Latimer encouraged the resignation because he believed that there had been a deterioration in the command in the fire department and that the rank and file were demoralized. (T. 175). Thereafter, Mayor Latimer had difficulty working with Chief Conroy's administration. (T. 183).

5. On September 25, 1989, mayoral candidate and City Council member

James Scheibel met with Stephen Conroy. Also present was Steve Hildebrand who was in charge of fund raising for the Scheibel campaign. (T. 47). During the course of the meeting Councilman Scheibel asked Mr. Conroy if he would help raise money for Scheibel's mayoral campaign. (T. 49, 1317). Chief Conroy had raised money for political candidates in the past. (T. 1317). Conroy did not agree to raise money and stated that he wasn't sure that his involvement would be helpful to Mr. Scheibel. (T. 51, 124, 1317).

6. At the end of October 1989, a series of articles appeared in the Minneapolis Star and Tribune which described a "culture of arson" in St. Paul allegedly involving the St. Paul Fire Department and Chief Conroy. (T. 23). Following the articles, Mayor Latimer urged Chief Conroy to take a voluntary leave of absence with pay pending the conclusion of an investigation, and Chief Conroy agreed to do so beginning November 1, 1989. (Ex. F; Ex. I).

7. On November 7, 1989, James Scheibel was elected Mayor of the City of St. Paul. On November 22, 1989, Mayor-Elect Scheibel met with Gary Olding, the firefighters union president, and Tim Fuller, the head of the fire department supervisors organization (The St. Paul Fire Supervisory Association). (T. 64, 254-55). They told the mayor that Steve Conroy was a bad manager, that he did not delegate authority, that he selected friends for appointive positions, that

he was suspicious of his employees, and that he asked firefighters to do personal favors for him while they were on duty. (T . 34, 37) They stated that morale in the fire department was very low and suggested that Chief Conroy be removed. (T. 37, 255, 423).

8. Mayor-Elect Scheibel sent a letter to Chief Conroy on November 22, 1989 asking that he resign his position as fire chief. The letter was sent to an incorrect address and was then resent on January 10, 1990 after Mr. Scheibel became Mayor. (Ex. G; T. 58). The letter also stated in part that:

Your service to the City of St. Paul has been long, and marks an era of excellence in many areas (I fire and safety services. I share with others an appreciation for the contributions you have made during your tenure as chief.

Although he wrote the letter, Mayor Scheibel did not really feel that Chief Conroy's term had been an era of excellence. (T. 63).

9. Subsequent to the letter of January 10, 1990, Chief Conroy advised Mayor Scheibel that he did not intend to resign. The Mayor then reduced Chief Conroy's salary from \$75,000 to \$60,000. (T. 1323). By a letter dated January 16, 1990, Chief Conroy advised Mayor Scheibel that to would not presently contest the reduction in pay but would be seeking back pay once he was returned to his position as fire chief. (Ex. H).

10. By letter dated March 1 1990, Chief Conroy advised Mayor Scheibel that he was rescinding the leave of absence he had taken on November 1, 1989 and intended to return to work as fire chief on Monday, March 5, 1990. (Ex. J; T 106, 1326). The Mayor then sent Chief Conroy a notice dated March 2, 1990 advising him that he was suspended without pay and that procedures were being initiated to terminate his employment and appointment as fire chief. The letter set out the grounds for termination, and advised Chief Conroy of his right to a hearing before the City Council as provided by the City Charter.

pre-termination hearing was set for March 12, 1990 at the Mayor's office. (Ex. 1). At the March 12, 1990 meeting Chief Conroy submitted a written response to the allegations contained in the Mayor's letter of March 2, 1990. (Ex. 2; Ex. L).

11. In a letter dated March 28, 1990, Mayor Scheibel provided Chief Conroy with formal notice of the termination of his appointment as fire chief, effective immediately, subject to the approval of the City Council. The letter set out the basis for the proposed termination. (Ex. 3; Ex. M). By a letter of the same date the City asked that Chief Conroy accept a temporary position as fire captain with the fire department during the pendency of discharge proceedings relative to his appointment as fire chief. (Ex. 4). Conroy declined to accept that request in a letter dated April 18, 1990. (Ex. BB). He is presently suspended without pay.

Conflicts of Interest

12. In 1980 the fire department established a joint safety committee which consisted of three members elected by the union, three members appointed by the administration, and a nonvoting chairman. During 1981 and 1982, this

committee conducted field evaluations of a number of makes of self-contained breathing apparatus (SCBAs) and entertained presentations from various manufacturers with a view towards selecting SCBAs for the fire department. (Ex. 9, p. 1; T. 1295). On September 8, 1982, the committee forwarded its recommendation to Chief Conroy, Of the five members voting, three recommended the ISI Ranger Unit and a fourth listed it as his second choice. Bob Eddy, a member of the committee, abstained from voting. Bids for the purchase of 135 SCBAs were mailed to 34 vendors on December 22, 1982. The low bidder at \$70,175 was submitted by International Safety Instruments, Inc. (ISI) who made the ISI Ranger. The next lowest bid was approximately \$24,000 higher, (Ex. 9, p. 2; T. 1297).

13. On January 5, 1983, Assistant Chief Ed Heinen sent a memo to the City Purchasing Department recommending that the contract be awarded to ISI. The memo specifically noted that the local service repair dealer for ISI was a company owned by the Eddy brothers and stated that one brother was a retired firefighter and another (Bob Eddy) was an active member of the fire department. It explained that Bob Eddy was a non-voting member of the evaluation committee. (Ex. HH). On January 7, 1983, a purchase order contract was signed by the purchasing department for the delivery of 135 SCBAs from ISI. The Eddy brothers made no profit on the sale of the equipment. However, payments totalling approximately \$23,000 were made to the Eddy brothers from 1983 through 1986, for purchases of replacement parts for the ISI equipment. (Ex. 9, pp. 2-3; T. 1297)

14. During 1986 Assistant Fire Chief Ed Heinen asked for an opinion from the City Attorney as to the propriety of the fire department contracting with the Eddy brothers for the purchase of parts for the SCBAS. The City Attorney replied that there did not appear to be any legal prohibition that would preclude the two employees from selling these materials to the City of St. Paul

as long as such sales were made in full accordance with the City's purchasing processes, and as long as these employees filed some sort of a notification with the City Clerk and the director of purchasing. (Ex. FF).

15. The state auditor reviewed the Eddy brothers matter in a report dated December 10, 1986. He noted that there was no regulation which prohibited a city employee from conducting business with the city but that the city charter required employees with a financial interest in a contract with the city to make that interest known, and to refrain from voting upon or participating in the making or performance of the contract. (Ex. 9, p. 6)
The state auditor concluded that:

It appears that in the purchase of the SCBAs from Eddy Brothers that there was no intent to commit an illegal act by anyone in the Fire Department. The Fire Department was candid in the memo of January 3, 1983 to the Purchasing Department in disclosing that the owners of Eddy Brothers are one active and one retired firefighters

This disclosure by the Fire Department to the Purchasing Department of Eddy Brothers connection with the Fire Department and Bob Eddy's abstaining as a committee member, in evaluating and recommending the type of SCBA to be purchased, abides with the policy expressed in Section 17.04 of the City Charter. (Ex. 9, p. 7).

16. The state auditor did point out that Bob Eddy's picking up of parts from his company for the fire department. violated the Charter since he was participating in the performance of the contract and it also criticized his splitting of purchases in the amounts under \$500 to avoid review by the purchasing department. (Ex. 9, p. 7) . The state auditor (and the Finance Department) recommended adoption of a regulation prohibiting business dealings by the city with city employees or firms in which they have an interest. (Ex . 9, p. 7 ; Ex . 10) By letter dated October 29, 1986 the City cancelled its purchase order with the Eddy brothers' company for parts for the SCBAs. (Ex . 13). The City purchasing department then set up a contract with the manufacturer, ISI, to supply parts for the SCBAs. (Ex. 10).

17. By a memo dated October 8, 1986, Chief Conroy advised the purchasing department that the fire department had severed business relationships with three other fire department employees who had supplied signs, exterminating services, and parts for small engines to the department. The amount of money involved ranged from \$225 to \$2200. (Ex. 12).

18. At the time that the auditor's issues addressed in the state report were raised, the St. Paul Fire Supervisory Association sent a letter dated November 3, 1986 to the Mayor and expressing support for Chief Conroy and asking Mayor Latimer to support the Chief . (Ex . 16 , Ex . B) Assistant Fire Chief Larry Stanger lobbied the Association Chief members to sign the letter hoping that it would improve the relationship between the Chief and the supervisors. (T. 461-62). At first the Association's President thought the letter wasn't a good

idea, but he agreed to onsite it after meeting with Chief Conroy and Chief Stanger and he then sold the idea to the district chiefs. (T. 638, 642). The firefighters' union also sent a letter dated November 14, 1986 to the Mayor asking him to issue a statement of support for Chief Conroy and stating that Chief Conroy's twenty-plus years of service should overshadow the "petty nitpicking and random accusations" that had been made. (Ex. C). In a written reply to the Supervisory Association, Mayor Latimer stated that he shared the Association's opinion that the Chief and the Department had been very effective. (Ex. AA).

Personal Telephone Calls

19. On November 19, 1985, Chief Conroy had a cellular mobile telephone installed in his city-owned vehicle. He was encouraged to do so by the police officer in charge of the communications center. (T. 1304). The cellular telephone was removed from the Chief's vehicle on March 12, 1986, reinstalled on May 15, 1986, and finally removed again on September 4, 1986. While the telephone was in his car, Chief Conroy made a number of personal long distance phone calls on the telephone. (Ex.11). He paid for the calls by giving the operator his personal credit card number. (T. 1305). He did not, however, pay for the charge per minute for the long distance calls, which was charged because they were made from a cellular telephone. (T. 136, 1306). Most of the charges were \$1 or less per call. (T. 135-36; Ex. 11). Chief Conroy did not routinely see the bills for the cellular telephone. (T. 139, 1306).

20. After Chief Conroy had removed the telephone, he was advised by the Mayor's office that a reporter had been inquiring about the mobile telephone in

his vehicle. (T. 1308). The records of
the use of the cellular telephone were
then reviewed by the St. Paul Finance
Department and by chief Conroy to

determine what charges had been paid by the City for personal calls. It was determined that the charges for air time on Chief Conroy's personal long distance calls amounted to \$504.78 and Chief Conroy willingly repaid that amount to the City, (T. 135, 139). Chief Conroy had removed the cellular telephone from his vehicle because he did not believe it was cost effective.

21. At the time that Chief Conroy had a mobile telephone in his vehicle, the City had no rule or guideline as to personal calls and cellular telephones. (T. 139, 1307). In reviewing the matter, Mayor Latimer believed that if the personal use of the telephone had ceased and the Chief had paid for the calls, that the matter should be closed. (T. 162). After reviewing the report of the state auditor which discussed the Eddy brothers' contract, the use of the cellular telephone, the fire service assistance fund and the allegations concerning misuse of on-duty firefighters, Mayor Latimer concluded that "In my judgment there was no sin, merely a variety of practices that were legitimized by history and actually contemplated by a charter law." (T. 158, 161). Mayor Latimer did not reprimand Chief Conroy or take any other disciplinary action. (T. 1311).

Misuse of Authority

22. In the early 1970s Chief Conroy would on occasion have an on-duty firefighter drive him to, and pick him up from, Metropolitan Stadium where he attended football games. (T. 568-9, T. 1270). The trip took approximately 15 minutes. (T. 573). Chief Conroy would call a Deputy Chief on the morning of a game and the deputy chief would advise him from which company he could recruit a driver. (T. 1271). Chief Conroy took a radio with him to the games and if a large fire occurred he would be picked up so that he could attend it. (T. 574, T. 1271-72). Chief Conroy discontinued this practice when the Vikings moved their stadium to downtown Minneapolis since it was easier to get away from the

stadium there than in Bloomington. (T. 1273).
On one occasion in
approximately 1970 when Chief Conroy was driven
to Metropolitan Stadium, a
three-man fire rig was reduced to only two men.
(T. 330, T. 570). Chief
Conroy was not aware that a rig had been reduced to
two men. (T. 1398).

23. When Chief Conroy first became fire chief
in 1968 the fire chief and
the assistant fire chiefs had drivers or chauffeurs
who were firefighters. (T.
1266; T. 576). The drivers were on call 24
hours a day, like other
firefighters, and were provided so that the chief
or assistant chief could
attend any fire or emergency. (T. 869, T. 1266).
Chief Conroy discontinued
the use of drivers or chauffeurs for himself in
1970, and for the assistant
chiefs two years later. This was done over the
objections of the firefighters
union which was concerned about eliminating the driver
positions. (T. 1267),
At the time the drivers constituted 3.5 full-time
employees. (T. 1267).

24. In approximately 1976 or 1977, Robert
Stober was Captain of a
paramedic unit. He was called by a dispatcher
and told that Chief Conroy
wanted him to take his paramedic unit to Stillwater to
a boat dock to pick up a
man having heart problems. (T. 515, 518, 1126).
He was told not to use his
radio once he left St. Paul. (T. 515). Captain
Stober proceeded to Stillwater
and picked up Walter Montpetit, a St. Paul citizen, at a
dock. Conroy and
Montpetit were attending a fundraiser for the fire
department being held on a
riverboat. Chief Conroy called for the paramedic
unit because he was unaware
of any paramedic or emergency ambulance service
in Stillwater. (T. 1273-74,

1 41 1) . The use of the unit left an area of St. Paul without a paramedic rig.

(T. 518) . There were six or seven paramedic rigs in St. Paul at the time. (T.

12 7 5) . Chief Conroy called the Mayor's office the following day to advise the Mayor that he had ordered a paramedic unit to Stillwater to pick up Walter Montpetit who had had a heart attack. (T. 1126, 1277).

25. On two (occasions in the mid-1970's Chief Conroy asked firefighter John Hanzel to come to the Chief's home to measure for carpeting while Hanzel was on duty. Chief Conroy was remodeling his home at the time. (T. 653-4).

Hanzel later installed the carpeting in Conroy's home on his own time and was paid for it. (T. 655). On a third occasion, Hanzel was asked by Conroy to come to his house to repair some carpeting while he was on duty. (T. 336, 654).

The repair job was necessitated by cigarette burns made during a fire department retirement party at Chief Conroy's residence. (T. 1279). Each

visit took about an hour or less and Hanzel's rig was reduced from four to three men while he was gone. (T. 655).

26. From 1972 to October of 1986 the Fire Department maintained a fire service assistance fund which was funded by public contributions. (T. 507 ; Ex

9, P. 8). The fund was set up to receive gifts from members of the public who were appreciative of paramedic service or fire service. (T. 1155, 1285).

Since the Department had no budgeted (discretionary expense account, the fund

served this purpose (Ex. 10). Only Chief Conroy could sign checks to make disbursements from the fund. (T. 507). Assistant

Fire Chief Robert Stober was directed by Chief Conroy on several occasions during 1981-83 to make purchases of liquor for parties for graduating paramedic recruits or retiring.

fire chiefs. (T. 509). The liquor purchases were paid for from the fund- (T. 509).

27. The fire service assistance fund was used for a large number of other expenditures (T - 509) including exercise equipment, ambulance jackets,

retirement gifts, and contributions to a union sponsored benefit for crippled children. (T. 1159-60). Over the 14 years the fund was in existence, the following expenditures were made:

Totals

Expenditures

department	Equipment for	\$	15,906.00
lunches	Business		2,152.00
retirees	Recognition dinners for paramedics, recruits, hazardous materials teams and		4,880.00
retirees	Gifts for		4,664.00
stations	Meals for public at fire		656.00
Program	Donations to Gilette Children's Hospital Carnival and Toy		900.00
members	Donations to injured firefighters and injured family		714.00
Fund	Firefighters's Airport Memorial		500.00
expenses	Antique apparatus and parade		614.00
	Miscellaneous		1,359.00

TOTAL \$ 33,126.00

(Ex. 9, p. 8).

The liquor purchases were included in the category of recognition dinners. (T. 1287).

28. The state auditor's report which reviewed the fire service assistance fund stated in part, as follows, concerning communications about the fund's purpose to contributors:

The four instances of acknowledgements that we have seen all read as follows:

Dear Mr.

Please accept our most sincere thanks for your generous donation. Your donation will be placed in

our Fire Service Assistance Fund, which is used for purchase of emergency care training aids, audio-visual training equipment, special retirement awards and the like.

We're deeply grateful for this expression of your support. Again, thank you.

Yours most sincerely,

In our opinion, this says in effect, thank you, we will spend your contribution as we see fit.

We hope that negative publicity will not result in an end to donations to the fire department from grateful individuals and associations. He recommend that in

the future all such donations be accounted for in the city's financial records.

(Ex. 9, p. 9).

29. After reviewing the fire service assistance fund, Mayor Latimer stated that he had found no violation of law or rule or abuse of public funds for selfish private ends. (T. 161). A review by the Finance Department of the City of St. Paul questioned whether meals should have been reimbursed to city employees while they were in the city and stated that certain donations should have been approved by the Mayor and City Council. (T. 145; Ex. 10, Att. #2). The Finance Department found similar operating problems in other departments.

It recommended that the City Council budget expense accounts for each department. (Ex. 10).

30. In 1982 or 1983, Captain Jack Hoffman was called into Chief Conroy's office and given an envelope to deliver to the Belmont Club. He and Gary Olding proceeded in the arson van to the Belmont Club while on duty and delivered the envelope to a bartender. (T. 221). The owner of the Belmont was

Walter Montpetit who was a member of the Hook and Ladder Club, a group of businessmen who raised funds for the fire department. (T. 1313) The envelope contained fund raising tickets. (T. 221, 1313).

31. In the fall of 1985, Captain Joseph Vruno was asked by a firefighter he supervised for a floating holiday the next day. The request was relayed to and denied by the deputy chief because of a lack of manpower. (T. 778) However, the next day the deputy chief called and directed Vruno to have an on-duty firefighter deliver Chief Conroy's car to the airport. This reduced the ladder company to three men for two to three hours. (T. 779) Some of the apparatus of a ladder company can only be handled by four firefighters (T. 777) .

32 in January of either 1987 or 1988, Fire Chief Conroy invited Captain Gary Olding to a department Christmas party at the Chief's house. (T. 225). Olding replied that he was working that night and Chief Conroy said that he would get Olding off. (T. 226). Olding told the Chief that it would not be correct for him to leave his crew. (T. 226). Chief Conroy has occasionally invited on-duty personnel, including union officers, to the Christmas party to recognize their efforts. (T. 1402).

33. The state auditor examined the allegations that the fire chief had asked on-duty firefighters to perform personal services for him. The state auditor concluded that "He attempted to review each and every allegation and found that most of the charges were either unfounded, exaggerated, or unprovable. However, we were able to verify three isolated incidents which occurred in the late 1970s. (Ex. 9, p. 10).

Improper_Management

34. The communications center is staffed by firefighters who take 911 calls, analyze the problem and dispatch whatever response is needed. (T. 233). During the last five years, the communications center has been

understaffed and has had little training. (T. 742, 892). Most of the staff consisted of firefighters on "light duty" who return to the street when they are recovered from illness or injuries. (T. 459). Deputy Chief Charles Sarafolien urged Chief Conroy to address this problem but Conroy told him that personnel could not be added because there was insufficient manpower and no one could be hired. (T. 747, 1430). Chief Conroy also received requests by Assistant Chief Stanger to add staff and increase training. (T. 456, 459). Chief Conroy agreed more staffing was needed but didn't feel he had it available. Adding civilian staff to the communications center has been held up by union objections. (T. 764).

35. Prior to a story on the communications center by WCCO-TV, it was staffed with three people. (T. 234). Following the story, a fourth person was added after the Mayor authorized overtime. (T. 234, 1432). A 1990 study of the communications center recommended a minimum of three dispatchers with support staff at all times and recommended hiring civilian personnel. It also recommended development of a formalized -Pre and EMS dispatch training and certification program. Ex 19 p. ii). No detailed written procedure exists for the communications center. (T. 236). The radio system at the communications center is down six to ten hours per month (T. 237, 756). It was purchased by and is controlled by the Police Department which uses and is satisfied with the same equipment. (T. 457, 774, 1168).

36 Most fire departments have adopted or are in the process of adopting written standard operating procedures (SOP's). The SOP's are written procedures for fire fighting and standards to measure performance. (T. 231, 451, 1429). Prior to 1989, the St. Paul Fire Department had none. In final form. (T. 475). At present the Department is developing administrative SOP's governing things such as sick leave and vacation time, rule SOP's governing things such as uniforms and personal appearance and tactical SOP's such as how to fight a fire in a high-rise building. (T. 452). Chief Conroy gave Assistant Chief Larry Stanger responsibility to develop SOPs during 1988. (T. 450). However, Stanger was only able to develop one SOP, for the incident command system, during his year-and-a-half tenure. Stanger felt that Chief Conroy frustrated development of the SOP's by asking for redrafts and continuing to argue about the content. (T. 450, 454). Other supervisors thought Conroy was delaying adoption of the SOP's by his inability to delegate authority. (T. 739). Conroy did send Stanger to Phoenix to procure their SOP'S. (T. 471). Not many fire departments have a full set of SOP's I Ike Phoenix. (T. 1429).

37. The arson or &re investigation division of the Department consists of one fire investigator on each shift. (T. 215). From 1982 until a couple of years ago, the training for a new investigator consisted of verbal instructions and reading a book. (T. 218). In the last two years, classes were made available to arson investigators after they requested more education. (T. 217, 223). The arson division lacks adequate clerical staff and a separate budget.

to hire specialized expert personnel .
(T. 754). The deputy chiefs advised
Chief Conroy of a need in that
regard. (T. 754) . A 1990
report on fire
investigation division in the Department
recommended that investigators
take
both a National Fire Academy course
and a Minnesota Bureau of Criminal
Apprehension course and become certified. (Ex. N).

38. The Fire Department
purchased new turnout gear --
pants, coat,
helmets and boots -- in 1987. (T. 226).
The field testing and analysis of
different brands of gear took over a
year. (T. 1251). The
gear selected was
tested by a 17-member recruit class, a
rescue squad, and three training
officers. (T. 1253) . The consensus
of these people, the supervisors in
the
Department and of other cities
contacted was that the gear selected
was the best available and was state-of-the-
art equipment. (T. 1253).
The life
expectancy of such gear is five to seven
years. (T. 227,
1256). At the
present time, the Department is ordering
new equipment because the old gear is
too heavy and causes heat stress. (T. 230).

39. Early in 1986, Captain
Kenneth Kunzer submitted to the
administration a satisfactory evaluation of a
firefighter who worked for him for
four days.
He was then called by Deputy Chief Cliff Newman who
told him that a prior
supervisor had nothing good to say about the
firefighters The
firefighter had
been suspended twice earlier and
was being rotated among companies
to get
independent evaluations of him. (T.
1415). Kunzer was instructed to hand
in a

"true" evaluation the next day. (T. 390). The next day he proceeded to the administration building and met with Chief Conroy, Assistant Chief Bob Heinen, and Deputy Chief Newman. He told them he would not change the evaluation and Chief Conroy told him that they would put the firefighter on his company. (T. 392). Chief Conroy suggested that Captain Kunzer hadn't required the firefighter to do his share of the work. (T. 1417). Captain Kunzer started to cry and they consoled him awhile and then Chief Conroy asked him to leave. (T. 392, 1417).

40, During 1 986, while District Chief Timothy Fuller was EMS (Emergency Medical Services) Chief, he at one point prepared a list of 13 or 14 potent i a I paramedics based upon recommendations from the department's Captains. (T. 414- 418) . He provided the list to the fire department administration. Shortly thereafter lists for hazardous materials (HAZMAT) training came out which contained the same names as the paramedic list. (T. 416). Because the firefighters opted for HAZMAT training, Fuller had to prepare a new list for paramedics and one paramedic class had to be cancelled due to a lack of trainees. (T. 417) . Chief Conroy told Fuller he any have acted hastily, but felt that HAZMAT training would help firefighters seeking a promotion to captain. (T. 416).

41. Lawrence Stanger was assistant chief of operations for the Fire Department from August of 1987 to April of 1989 when he resigned. (T. 447) . At the end of 1988, Chief Stanger and Chief Conroy had suspended a fire captain who was shopping in a surplus store while on duty. (T 449) . Chief Conroy made all final decisions about discipline. (T. 479). Shortly thereafter another captain was shopping while on duty. Stanger told the Captain that he would be suspended, but then Chief Conroy refused to sign the suspension. (T. 449). after the first suspension, a number of supervisors told Chief Conroy that the rule should be relaxed. (T. 1368). He told the Chiefs to recommend a

plan and they did come up with a new policy which permitted some grocery shopping. Chief Conroy waited to take action on the second violation until the new policy was completed. (T. 1368).

42. in 1971 Chief Conroy initiated regularly scheduled staff meetings to be attended by each division head. The meetings were held monthly prior to Chief Conroy's leave and were attended by approximately fifteen people. (T. 1370-71). Minutes were kept and each division head reported concerning his or her activities. (T. 1151, 1347).

43. Chief Conroy's management style is more authoritarian and centralized than participatory or democratic. (T. 314, 707, 715, 1007). He tends to want to have the final say in most important decisions and therefore does not delegate complete authority to his supervisors. (T. 426, 737, 1007, 1261). As a result the Chief's office has occasionally been a bottleneck where some decisions were delayed. (T. 524, 1028, 1180). Chief Conroy has, however, been willing to listen to a large number of opinions before making up his mind.

(T. 1153). He has maintained an "open door policy" which permitted any firefighter in the Department to visit him to discuss his concerns. (T. 1374). occasionally, however, this has resulted in Chief Conroy allowing firefighters to bypass the chain of command. This would upset a supervisor who might be the

last decision. (T. know about a particular 424). For example, in 1985 or 1986, Chief Conroy ordered company captains to come to him directly with certain policies and procedures. (T. 630). As a result, chief Conroy has not had a strong working relationship with his middle managers recently. (T. 633, 741, 1425).

44. Among Chief Conroy's strengths are preparing, managing, and communicating about the fire department budget. (T. 795, 818). He of ten has been able to find funding for important programs. (T 1 081) . However, in recent years the City of St. Paul has found it necessary to cut budgets in its light of less public funding. In 1982, approximately 40 firefighters or fire companies were cut from the fire department because of a cutback in state

funds. (T. 799: Ex. RR, Ex. SS). The cuts were resisted by Chief Conroy. (T. 800). During the same time period, additional responsibilities were added to the fire department such as hazardous materials responsibilities and building inspections. (T. 801). More recently, with a hiring freeze in place for firefighters, Chief Conroy was active is seeking an adequate overtime budget and resisting cuts to that budget. (T. 813; Ex. R, Ex. EE). There was agreement among witnesses testifying that the Fire Department is presently short some 36 firefighters due to attrition and the hiring freeze, and that this has caused difficulty for the Department. (T. 248, 254, 765, 849).

45. It is not unusual for fire departments or other large organizations to have employees who are critical of decisions made by the leadership. (T. 1031). This sometimes occurs because employees do not have all of the information available to the person making the decision. (T. 709-10). A number of supervisors and firefighters believe that Chief Conroy is either a poor or mediocre manager. (T. 208, 341, 522, 598, 736). A number also believe that he has been a good cm effective manager. (T. 850, 874, 888, 907, 931 1038, 1107, 1133, 1137).

46. There was near universal agreement among the witnesses testifying in this proceeding that the City of St. Paul has an excellent fire department. A master plan for the Fire Department completed by an independent consultant in July of 1989 stated the following concerning the reputation of the Department:

Department Reputation

The Department of Fire and Safety Services has an excellent reputation in the community. Civic officials, business leaders and representatives of various groups expressed strong support and respect for the members of the Department and their service to the community.

political office Officials who have been in
for over five years noted that no complaints had been filed with
them in that Period.

The City and Department have
a number of excellent public
recognized as national models that are
recent article on management In a
top ten of cities, Saint Paul was listed as one of the
best managed cities.

in Saint Paul in a 1986 survey of residents
determine Planning Commission the to
protection opinions of City
services, fire
received the highest
satisfaction rating of City
services in a district
(93) percent of the general
survey respondents stated that
they were satisfied or
very satisfied with fire protection.

The fact hat the
Department enjoys such a high
very highly reputation in the City speaks
of the Mayor,
City Council, Chief and members of the Department.
(Ex. 52). (Emphasis in original).

Favoritism in Appointments

47, There are three unclassified assistant chiefs in the fire department, one for administration, one for operations (fire suppression), and one for support services, which includes the EMS program. The assistant chief for operations supervises three deputy chiefs who in turn supervise four district chiefs. (Ex. 0). Except for the position of assistant chief, supervisory positions in the St. Paul Fire Department are classified and are hired from a list of three names certified by the personnel department. (T. 268, 270). The fire chief has the discretion to choose any of the three names certified. (Ex. 20; -T 1328). Of the hundreds of appointments and Promotions made by Chief Conroy during his tenure, he has always selected the number one ranked candidate except on six occasions. (Ex. P; T. 1329). Three of the occasions were the selection of an EMS Chief. (T. 1329).

48. Gary It Trudeau was first appointed as a firefighter in 1972. In 1975 he took paramedic training and became a paramedic - (T 830). In 1978 he was elected treasurer of the firefighters union and was on its negotiating committee in 1977 and 1978. (T. 836). Mr. Trudeau was president of the union from 1980 to the end of 1986. (T. 836). He was criticized by some as being too close to Chief Conroy while serving as union president. (T. 840). In 1985 he was elected state president of the Minnesota Professional Firefighters in which capacity he lobbied at the State Capitol. (T. 836). He has also served on committees with the International Association of Fire Fighters. (T. 837). He has taken courses in labor relations and fire occupational safety and health. (T. 837). In 1987 Chief Conroy appointed Trudeau assistant chief of administration. (T. 830). He supervises the administrative office, research and development, public information, fire prevention, personnel, payroll, purchasing, and supervises the budget. (T. 831-34; Ex. 0). He is in his third year of executive fire officer training with the National Fire Academy. (T. 847).

49. Chief Trudeau does not have a good working relationship with the Supervisors Association which objected to his appointment. (T. 846). 'The Association and its members protested the appointment because Trudeau had not been -a supervisor, had not been able to pass the promotional examination for captain, and because Trudeau's salary was doubled. (T. 420, 598, 634).

50. In May 1989 Chief Conroy picked David W. Huisenga to be EMS Chief. He ranked number three on the certification list. (T. 880, 884) - Huisenga became a firefighter in 1972. He had attended college for two years, at which point he took the fire department test. (T. 880). He completed his paramedic training in 1976 and worked as a firefighter paramedic. (T. 879) . He was promoted to captain after approximately four years, Mr. Huisenga also owned and operated a cheese store which grew to four stores. (T. 882). As EMS Chief he supervises the field operations of the paramedics, coordinates their training and is liaison to St. Paul Ramsey Hospital . (T. 883). The medical director of EMS at St. Paul Ramsey is satisfied with Huisenga's work. (T. 1011).

51. The person who ranked number one on the test for EMS Chief in 1989 (when Huisenga was appointed) was Warren Schaub. (T. 589). Schaub, one of the original paramedics with the Department, was well qualified for the position.

He has done extensive teaching and consulting in emergency medical services. (Ex. 20, T. 583-88, 720-21). He has also been an outspoken critic of Chief Conroy since 1977. (T - 604) Schaub was also number one on the list for EMS Chief in 1987 when Chief Conroy picked Richard Weisner, who was ranked number two. (T. 590) . At that time Chief Conroy told Schaub that although he was qualified and a lot of people had supported him, he was selecting Weisner because the Assistant Chief supervising EMS supported Weisner and Chief Conroy felt that Schaub would not be a team player in the administration. (T. 593, 614-15, Ex. 20). Dr. Brian Campion at St. Paul Ramsey Medical Center felt he could have worked with Schaub but he recognized that Schaub had a strong need to do things his own way and might have had trouble working with chief Conroy. (T. 724-25). Schaub felt Weisner was an excellent EMS Chief. (T. 618).

52. In the spring of 1988, Schaub ran into Chief Conroy at Gallivan's and asked to speak to him for a minute. (T. 593). Schaub had had approximately three drinks. (T. 621). Schaub asked Conroy why he had not been picked for EMS Chief. (T. 594). The conversation turned into harsh words and ended with the men swearing at each other. (T. 621) . Schaub assumed thereafter that he would not be appointed EMS Chief by Conroy in the future. (T. 594).

53. Even those within the Department who have been critical of some of Chief Conroy's appointments, admit that he has made a number of excellent appointments such as former Assistant Chief Ed Heinen and including i number of men presently serving as chiefs. (T. 351-357, 538).

54. Chief Conroy appointed firefighter Douglas E. Friberg as his administrative assistant in April of 1986. (T. 905). He became a firefighter in 1985 after graduating from the University of Minnesota in 1980. He became aware of the administrative assistant opening through an ad in a national magazine and then submitted a resume to Chief Conroy and interviewed for the

job. (T. 903-04). Prior to his appointment, he had only spoken to Chief Conroy twice and had never socialized with the Chief. Neither he nor anyone in his family were personal friends with the Chief. (T. 904).

55. Steven L. Zaccard is the fire marshall and chief of the fire protection division. (T. 919). He supervises 28 people and is responsible for code enforcement, fire safety education, new construction review, and lobbying for safety initiatives. (T. 919). He was hired by Chief Conroy in 1984. (T. 921). He learned of the job from a national magazine when he was working in fire prevention with a suburban Chicago fire department. (T. 920). He did not know Chief Conroy before applying for the job. (T. 920).

Affirmative Action

56. The responsibility for the setting of affirmative action policy for the City of St. Paul rests with the Mayor and the City Council. (T. 113, 167). The fire chief, with other department heads, is expected to provide the leadership to carry out the policy. (T. 113). Affirmative action policy in the fire department has been strongly influenced by the firefighters' union. (T. 116). The union has resisted proposed affirmative action plans and has threatened to circulate and has circulated petitions to put the question of affirmative action on the ballot. (T. 167, 248). In Mayor Latimer's opinion, affirmative action in hiring firefighters was not a high priority for Chief Conroy. (T. 169).

57. As a part of an agreement with the union on an affirmative action Policy, Mayor Latimer agreed to defend the firefighters hiring test. The test was subsequently challenged by the State Department of Human Rights and the contested case proceeding is still pending. (T . 178- 179. Ex . Q) .

Very few firefighters have been hired since 1983 due to the failure to resolve the matter of the affirmative action and to implement an examination. (T. 250), Chief Conroy favors hiring women as firefighters and believes that women can do the work. (T. 1438). In 1989 Chief Conroy proposed to Mayor Latimer that two women firefighters from Minneapolis and one from Columbia Heights be hired under a plan which permitted transfers of minorities from other cities. (T. 1439) . The Mayor believed it would violate his compromise with the union, however, and the plan turned out to be not feasible. (T. 1439).

58. In 1968 Chief Conroy assigned a black firefighter, Bob Harris, to full-time duty in the Selby-Dale area to recruit blacks to take the firefighter examination. (Ex. QQ) The program did produce a candidate whose family was in New Orleans and Bob Harris and the Chief cosigned a loan with the credit union to permit him to move his family to St. Paul and accept the appointment to the fire department. (T 1103 1335) . In approximately 1975 the fire department also established an office in the Selby-Dale area to recruit blacks. (T. 1199). As a result of the affirmative action program a number of black firefighters were hired in 1975 - (T. 1218). Chief Conroy assisted one of them in getting additional training which helped him to pass the paramedic examination. (T. 1220). There are presently 24 black firefighters on the St. Paul Fire Department. (T. 1218).

59. In 1975 Fire Captain Robert Stober visited Seattle to look at their paramedic program. (T. 520) . He learned that Seattle had a firefighter whose sole job was to recruit minorities and females. (T 520).
Captain Stober

mentioned this to Chief Conroy when he returned to St. Paul but Conroy told him St. Paul did not need that. (T. 521).

60. Chief Conroy is the appointing authority for the fire prevention unit. (T. 926). Since 1980 when the unit was civilianized, the hiring has not been done from a firefighter list. Since 1980 Chief Conroy has made 16 appointments in the unit. Of these, ten were either female, minority, or handicapped. (T. 927-28, 932, 942). In several cases all certified candidates were female, however. (T. 1452; Ex. 22). Fran 1984 to 1988, the Mayor had a policy requiring department heads to appoint any protected class members on hiring lists or explain to the human rights director why the appointment was not made. (T. 946, 1446). Any disagreement was settled by the Mayor. T. 1449). The Mayor's policy did not apply to promotions. (T. 1449).

61. Katherine Reyes is the assistant fire marshall who manages the certificate of occupancy and code enforcement program in the fire prevention division. She supervises 20 people, including 18 inspectors. (T. 954). Reyes started with the fire department in 1975 as a clerk-typist. (T. 955). In 1980 Chief Conroy told her the fire prevention unit was being civilianized which would open up fire aide positions. She asked if she would be interested in applying. (T. 958). Because of Chief Conroy's encouragement, Reyes took the examination and was hired. (T. 960). Chief Conroy encouraged Reyes to continue her education. (T. 961). She was promoted twice by Conroy and then became assistant fire marshall in 1986. (T. 963) She is the highest ranking woman in the fire prevention division of a fire department in a city of comparable size in the nation. (T. 964).

62 Carol Witherspoon is the administrative assistant to the fire chief. She started with the Department as a clerk-typist in 1973. (T. 970) Witherspoon received several promotions and became Chief Conroy's secretary (T. 972). In 1983 she was promoted to office manager after she was told Chief Conroy she would be leaving because she felt she had hit the top of her career ladder with the fire department. (T. 974). He advised her that managerial appointments would be open to her. (T. 974) In December of 1988 she was promoted to administrative assistant, in which capacity she coordinated the budget, supervised office personnel, and represented the (Chief on committees (T. 975-76). Conroy had her take the firefighter courses available at a vocational school. (T. 978).

63. At Chief Conroy's direction any new fire stations or those involved in major remodeling must include a design which permits accommodations for women firefighters. (T. 1105).

Major Achievements during Chief CONroy's Tenure

64. In 1967 Chief Conroy initiated out-of-city contracts to provide fire protection to areas outside of the City of St. Paul. (T. 1337) The money obtained, up to \$200,000 a year, went into the fire equipment fund to purchase equipment for the department. (T. 1337).

65. In approximately 1970 the fire chief helped introduce the Opticom, system developed by the 3-M Company to the City of St. Paul. The system permits a fire truck heading to a fire to change the red traffic lights to green. (T. 1338). Chief Conroy was instrumental in obtaining funding for the project and in overcoming the opposition of traffic engineers. (T. 1340). The City of St. Paul is presently the only city in the country which has Opticoms on all traffic signals in the city. (T. 1341).

66. The creation of a paramedic unit within the St. Paul Fire Department

was first discussed in a meeting in 1972 between Chief Conroy, Assistant Chief Ed Heinen, and Dr. Brian Campion, Chief of Cardiology at St. Paul Ramsey Medical Center. (T. 675) . Both Chief Conroy and Dr. Campion traveled to other cities to observe paramedic programs. (T. 677) . The proposal for St. Paul was unique in that the firefighters were to serve as paramedics while also retaining their fire service role. (T. 680, 1348). Chief Conroy testified at the Legislature to obtain legislation permitting a paramedic unit (T. 1142) He was involved in selecting the first paramedics, the selection of first stations to be used, and in managing the conflict caused by the addition of duties for firefighters without an increase in pay. (T. 681, 1229). Chief Conroy was supportive of the firefighters being off fire service duty for six months of training as a paramedic. (T. 683) . Dr. Campion felt that Chief Conroy supported the paramedic program. They were able to solve the conflicts that occurred in developing the paramedic unit. (T. 684). Eventually the paramedic program consisted of ten paramedic ambulances with two trained paramedics on each rig. The units have an average response time of three to four minutes. (T. 689; Ex. E-3). Approximately 90 firefighters are certified as paramedics and 132 as emergency medical technicians. (Ex. E-3) . The St. Paul paramedic unit has received national recognition as a cost-effective approach to providing emergency medical services. (Ex. KK-00).

67. In the early days of the paramedic program, monthly meetings were attended by chief Conroy, Assistant Chief Ed Heinen and EMS Chief Bob Pye, as well as Dr. Paul Campion and Dr. Bob Van Tyn from St. Paul Ramsey. (T. 719). Since the mid-1980s, chief Conroy has attended fewer meetings as they became more operational and I e s s policy oriented. (T. 719-20). Chief Conroy has been instrumental in making sure that adjustments were made in the fire service if they were necessary to ensure the quality of patient care in the paramedic operation. (T. 1006).

68. In 1973 Chief Conroy acquired funding for and started planning construction of a training center and a training tower for firefighters. The training center provides seven days a week training with a full-time staff. (T. 1138, 1208). The training center is shared in part with the Minneapolis Fire Department which pays St. Paul \$25,000 per year. (T. 1350).

69. In 1974, Chief Conroy proposed a blood pressure screening program under which any citizen could have his blood pressure checked free at any fire station in the city during certain hours. (T. 692, 1350). He consulted with Dr. Campion and St. Paul Ramsey Medical Center, which trained firefighters to take accurate blood pressure readings. (T. 694). Chief Conroy sold the program at City Hall. (T. 695). The St. Paul program was one of the first in the country. (T. 1350). The program is conducted at no charge to those being tested and presently does some 100,000 blood pressure checks each year. (T. 1350).

70. In 1980, Captain Robert Stober and others proposed to Chief Conroy that the Department start a mandatory physical fitness program for firefighters. (T. 532; Ex E-3). The program includes physical exercise and testing for stress and strength. (T. 534, 697). Chief Conroy consulted with Dr. Campion at St. Paul Ramsey Medical Center concerning the advisability of

such a program and whether it should be mandatory. (T. 698). Chief Conroy was able to find \$100,000 to start the program, hired a physical fitness professional to run the program, and has strongly supported the program. (T. 532, 1178, 1356). The program was initially unpopular with the firefighters. (T. 1 22 9) The program has uncovered five firefighters who had undiagnosed heart disease. (T. 700; Ex. E-3). The program currently provides information to firefighters in the areas of nutrition, weight control, cancer screening, cholesterol testing, back health care, and stopping smoking. (T. 1178) . St. Paul was one of the first fire departments to institute a mandatory program. (T. 1 039)

71 . In approximately 1985 Chief Conroy decided to establish a hazardous materials (HAZMAT) response team in the St. Paul Fire Department after learning about it at a convention. (Tn 1083 , 1 361) . The HAZMAT team consists of firefighters 'trained to deal with incidents of spills or leaks of hazardous materials. (T. 1084) . Chief Conroy suggested that the rescue squads would become the HAZMAT teams and they initially received 120 hours of specialized training. (T. 1 08 5) . He was instrumental in obtaining the equipment needed for the HAZMAT teams. (T. 1089). Chief Conroy also negotiated with the firefighters union for a change in the bid system to implement the HAZMAT program. (T. 1086). Presently there are two HAZMAT teams in St. Paul consisting of five people each with two fully equipped vans. (T. 1087). Approximately 55 firefighters have received 200 hours of training to become hazardous materials specialists. (Ex. E-3). The teams also contract with other cities, which generates income for St. Paul. (T. 1088).

72. In 1984 and 1985 Chief Conroy was active in pursuing legislation which would require the use of hard wire smoke detectors, that is those which do not use batteries. (Ex. V: T. 933, 1362). Hard wire smoke detectors are now mandatory in all homes built after 1973. Approximately 3200 such smoke detectors have been installed in St. Paul. (T. 934). Within ten years approximately 80 percent of houses in St. Paul will have hard wire smoke detectors. (T. 1362).

73. The deaths per capita by fire in the City of St. Paul has consistently ranked below national average. (Ex. W). From 1979 to 1989 the fire deaths per year averaged 4.0 in St. Paul which was the lowest of cities of comparable size. (Ex. X). The City of Minneapolis averaged 12 fire deaths per year during the same period. (Ex. X).

74. In 1985 the fire department took on the responsibility for building inspections for a certificate of occupancy in the City of St. Paul. (T. 921) Ex. V). The department gained ten field inspectors by transfer who enforce the housing, building, and zoning codes. (T. 923) The transfer was the culmination of two years of planning and negotiations. (T. 924). Chief Conroy appointed John Colonna and Steven Zaccard to accomplish the transfer. (T. 925). Few fire departments perform this comprehensive inspection function (Ex. V) The department was able to clear up a three-year backlog in the program. (T. 936, 952).

Based upon the foregoing Findings of Fact, the Administrative Law judge makes the following:

OF LAW

CONCLUSIONS

1, That the City Council of the City of St. Paul and the Administrative Law Judge have jurisdiction in this matter pursuant to 12.12.4 of the City Charter and Minn. Stat. 14.55.

2. That the notice of termination issued by the Mayor of the City of St. Paul is proper in form and that all procedural requirements have been complied with by both the Mayor and the Respondent.

3. That the burden of proof in this proceeding is upon the Mayor of the City of St. Paul to prove the facts at issue by a preponderance of the evidence.

4. That 12.12.4 of the City Charter of the City of St. Paul provides that a fire chief may be removed from office only "for cause by the mayor with the approval of the council by five (5) votes after hearing before the council;". (Ex. 6).

5. That evidence of inefficiency or misconduct prior to the Fire Chief's current term of office is properly admissible and relevant to show cause for removal on the grounds of inefficiency in this proceeding.

6. That evidence of misconduct which has been subjected to formal review on a prior occasion in a disciplinary process potentially leading to a disciplinary action should not be considered to show cause for removal on the grounds of misconduct in this proceeding.

7. That the Mayor has not proved by a preponderance of the evidence that cause exists for the removal of Stephen F. Conroy as fire chief of the City of St. Paul.

8. That these Conclusions are arrived at for the reasons set out in the Memorandum which follows.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED that the St. Paul City Council not approve the proposed termination of the appointment of Stephen F. Conroy as fire chief of the City of St. Paul and it is further recommended that the City Council award him backpay to March 2, 1990 with interest.

Dated this 19th day of June, 1990.

GEORGE A. BECK Administrative Law

Judge

Reported: Court Reported. Transcript Prepared.
Sandy Gehrke, Logan & Styrbicki
2012 American National Bank Building
St. Paul, Minnesota 55101
Telephone: 291-1095

MEMORANDUM

Removal for Cause

This case arises because the Mayor of the City of St. Paul, James Scheibel, seeks to remove the Fire Chief, Steven F. Conroy, from office. Under the City Charter the fire chief may be removed only for cause. The Minnesota Supreme Court has defined what is sufficient cause for dismissal of a public employee or public officer. In Hagen v Civil Service Board , 164 N.W. 2d 629, 631-32 (Minn. 1969), the Supreme Court quoted with approval from its earlier decision in State ex rel. Hart v. Common Council, 55 N.H. 118, 120 (1893) where it said:

. . . Cause" or "sufficient cause" means "legal cause",
and not any cause which the council may think
sufficient. The cause must be one which specifically
relates to and affects the administration of the office,

and must be restricted to something of a substantial nature directly affecting the rights and interests of the public. The cause must be one touching qualifications of the officer or his performance of its duties, showing that he is not a fit or proper person to hold the office. An attempt to remove an officer for any cause not affecting his competency or fitness would be an excess of power, equivalent to a arbitrary removal. In the absence of any statutory specification, the sufficiency of the cause should be determined with reference to the character of the office, and the qualifications necessary to fill it.

This definition was again reaffirmed in Gibson v. Civil Service Board, 171 N.W.2d 712, 714 (Minn. 1969). In Gibson the court noted that a dismissal must relate to the manner in which the employee performed his or her functions. The evidence showing the reasons for dismissal must be substantial. Ekstedt v. village of New Hope, 292 Minn. 152, 193 N.W.2d 821, 828 (1972).

Under the Hart case, it is not necessary to show malfeasance or even misconduct to justify a removal. Rather, proof of incompetence in the performance of the officer's duties is sufficient where it is something of a substantial nature directly affecting the public interest. Included within the definition of incompetency is inefficiency or acts inconsistent with the conduct of the office in question. State ex rel. Rockwell v. State Board of Education, 213 Minn. 184, 6 N.W.2d 251, 260 (1942). The Mayor has the burden of proof in this proceeding to show cause for the fire chief's removal. In Re city of White Bear Lake, 311 Minn. 146, 247 N.W.2d 901, 904 (1976). In an administrative proceeding the party with the burden of proof must prove the facts at issue by a preponderance of the evidence. In Re Schultz, 375 N.W.2d

509, 514 (Minn. Ct. App. 1985); in Re Wang, 441 N.W.2d 488, 492 (Minn. 1989).

Conduct during a prior term

At the hearing Chief Conroy preserved an objection to the introduction of any evidence which predates his present term in office which began on January 1, 1986. Chief Conroy argues that the case law in Minnesota holds that evidence of acts of misconduct outside a public official's present term are admissible only under certain limited circumstances, which he suggests are not present in this case. The Mayor argues that Minnesota is one of the states adhering to a majority rule in this country which states that misconduct occurring in a prior term of office may constitute grounds for removing a public officer from his present term. The Mayor urges that such a rule is appropriate in order to protect the integrity of public offices and he points out that the appointing officer may not have known of the prior misconduct when the public officer was reappointed.

Both misconduct (e.g., personal telephone calls) and inefficiency (e.g., improper management) have been asserted by the Mayor as grounds for removal of Chief Conroy. Inefficiency denotes incapability for office while misconduct denotes an improper discharge of the duties of the office. *Hughes v. Department of Public Safety of City of St. Paul*, 273 N.W. 618, 621 (Minn. 1937). In an early case the Minnesota Supreme Court examined the question of whether or not acts of misconduct committed during a prior term could be considered to remove a sheriff. It stated:

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It was further insisted for respondent that a
officer cannot be investigated in removal proceedings for
acts of misconduct committed previous to the term when he
is holding office. He cannot hold this contention well
taken in this case. Many charges by the public
relating to the term previous to the
incumbency, set forth in the information, are of the
nature as one specific act occurring during his
term, and it is further stated therein that large sums
of money illegally collected during the previous years
are still retained by him.

State ex. rel Douglas v. Megaarden 85 Minn. 41 , 88 N.W. 412 ,
3 1 901
Chief Conroy argues that the holding in Megaarden should
be limited to
situations where the prior and current acts are of a similar
nature or where
illicit gain is retained in the current term of office.

In Hughes, supra, the Minnesota Supreme Court again
considered prior
misconduct. The City of St. Paul sought to discharge a police
officer who had
a number of suspensions and reprimands for misconduct. The Court
stated:

misconduct
that
into
officer
not
the

In so far as such acts apply to charges of
upon which appellant's removal is asked, to agree
the service record should not and could not be taken
consideration by the trial board. Where a police
is charged with having committed a specific act of
misconduct, his record of previous demerits is
competent evidence which the board may consider for
purpose of determining (guilt or innocence of a specific
charge. (Citations omitted].

Hughes, 273 N.W. at 621 . However, the Hughes court went on to
note that a
different rule applied in the case of a charge of
inefficiency. It stated
that:

that The charge of inefficiency is a charge distinct from
denotes of breach of duty or misconduct. Inefficiency
an incapability for office, while misconduct denotes
an improper discharge of the duties of the office. While
officer may not twice be punished for the same
misconduct, the act of misconduct may later be used
because against him to prove that he is unfit for office
of inefficiency.

Hughes, 273 N.W. at 621. The holding of the Hughes court was
that prior acts of misconduct which were the subject of disciplinary action
may not be considered for the purpose of determining the validity of a
later specific charge of misconduct. Nor can one be found to have engaged in
misconduct a second time based on one prior incident. The court did consider
it proper to consider earlier findings of misconduct as to a charge of
insufficiency, however.

State ex. rel. Rockwell v. State Board of Education 6 N.W.2d 251 (Minn.
1942) involved the removal of a State Commissioner of Education
who was serving

a statutory six-year term. The court noted that evidence of specific acts of inefficiency and misconduct occurring during the immediately preceding term of office were received into evidence. The Commissioner complained that the Board of Education based its order of removal upon acts occurring during the prior term. The Supreme Court held that:

"Inefficiency" denotes incapability for office. Therefore, any evidence tending to show such incapability is relevant to the issue of present Inefficiency, even though the period to which the evidence relates may have been a prior term in office, or for that matter, a period during which the official held no public office whatsoever. [Citing Hughes, supra, and Megaarden, supra.]

The findings and conclusions must be considered as a whole, and, so considered, they satisfactorily show that the board did not make misconduct during the relator's first term the basis for his dismissal. Though finding, as conclusions of law, that relator was guilty of misconduct and inefficiency during his first term, each such conclusion was followed by another of like import expressly limited to the existing term of office.

Rockwell, 6 N.W.2d at 259. The rule established by these cases is that any prior actions, whether labelled misconduct or inefficiency and whether or not they have been the subject of disciplinary action in the past, are admissible in a current proceeding on the issue of competence or inefficiency. See also, Hagen v. Civil-Service Board, 164 N.W.2d 629, 633 (Minn. 1969). Since inefficiency is at issue in this case, evidence of prior acts cannot be excluded on the grounds of relevance.

However, the Rockwell court did appear to frown upon the decisionmaker

relying upon evidence of misconduct in a prior term as a basis for dismissal in the current term and the Megaarden holding seems to rest upon the same act of misconduct having occurred in both terms. Additionally, the Hughes court specifically indicated that prior acts of misconduct which were the subject of disciplinary action were not relevant to specific charges in the current term. Most of the alleged acts of misconduct in prior terms of office of the fire chief were the subject of what was in effect a disciplinary proceeding. The Eddy brothers contract, the personal telephone calls, the fire service fund and the use by the fire chief of department personnel for personal services (such as rides to the airport or football games or for carpeting services) were all examined by the state auditor during 1986. They were also examined by the City's Finance Department. Both issued detailed reports on the incidents. Neither report found much fault with what had occurred. The incidents were then reviewed by the Mayor who specifically stated that he found no violations and declined to take any disciplinary action. Had the Mayor issued a written reprimand these incidents would fall within the holding of the case law discussed prohibiting its consideration on the grounds of misconduct in the

present term.!/ The result should be no different where the public officer was exonerated.

There is an important element of due process involved when allegations contain charges which might be characterized as "stale". Memories fade over the years . In this case Chief Conroy was called upon to testify concerning events which happened in the early 1970s, over fifteen years ago (Finding of Fact No. 22) Some courts have recognized that while there is no hard and fast rule, there must be a point at which an appointing authority must take action relative to misconduct or be precluded from doing so. *Nicholas v. Housing Authority fo New Orleans* 477 So. 2d 1187, 1191 (La. app. 1 Cir. 1985) *Butler v. Lamont School District No. 246* 745 P. 2d 1308, 1313 (Wash. App. 1987) . Given the detailed review of events in 1986, Chief Conroy would have been justified in concluding that these matters were put to rest. There is no Minnesota case law, however, which provides authority for estopping an employer from taking action as to stale allegations or as to incidents which were condoned by the employer at the time of their occurrence.

It is concluded however, based upon the Minnesota case law, that the matters discussed and considered in the state auditor's report should not be used to support removal in this proceeding on the grounds of misconduct. The events of 1986 and earlier do not relate to specific allegations of misconduct subsequent to that time as was the case in *Megaarden*. Neither is this a case where the events in question were not uncovered until the current term or until immediately preceding this disciplinary action as apparently was also the case in *Megaarden*. The Administrative Law Judge feels compelled to recommend to the City Council that it consider those prior incidents in regard to the allegations of inefficiency, however, because of the holdings of the Minnesota Supreme Court discussed above, despite the due process questions involved, as expressed by the courts in other jurisdictions. The Supreme Court's holding

that prior misconduct can be considered as to inefficiency but not as to misconduct in a current term may seem like a fine legal point. It does, however, reflect the idea that incompetence is typically revealed as a continuing course of conduct over a period of time. The distinction may have a practical effect in that it is probably appropriate to assign less weight to the pre-1986 acts as they relate to inefficiency than would be the case if they were being considered to support removal for misconduct. This is because inefficiency typically must be proved through more examples than misconduct.

Conflicts of Interest

The specific factual allegations made must be reviewed to determine whether they amount to misconduct or inefficiency of a substantial nature directly affecting the public interest, showing that Chief Conroy is not a fit or proper person to hold the office. The Mayor argues that the contract with the Eddy brothers to purchase replacement parts for SCBAs violated the City

I/ Two of these incidents occurred partially in the present term which began January 1, 1986. The personal telephone calls made by the fire chief commenced in November of 1985 and the cellular telephone was removed on March 12, 1986. Additionally, although the SCBAs were purchased and the Eddy brothers parts contract was signed in 1983, the parts contract was not cancelled until October 29, 1986. Nonetheless, having been once considered in ,I "disciplinary proceeding" and condoned, they should not again be found to be misconduct in this proceeding. The fire service assistance fund was in existence from 1972 to approximately October 1986. However, no testimony indicated that liquor purchases were made in 1986.

Charter by failing to disclose the brothers' interest to, the purchasing department and in submitting billings to the fire department for replacement parts in excess of \$23,000. The Mayor also points to the state auditor's finding that Mr. Eddy intentionally split purchase orders to avoid review by the City Purchasing Department. The record in this matter indicates however, that firefighter Bob Eddy's involvement in this contract was fully disclosed. In a memorandum to the purchasing department the assistant fire chief specifically stated that one active firefighter and one retired firefighter was the local service repair dealer for the low bidder. He explained that Bob Eddy was a non-voting member of the evaluation committee. (Finding of Fact No. 13). The purchasing department proceeded to contract with the winning vendor, no doubt influenced by the fact that its bid was approximately \$24,000 lower than the next lowest bid.

The evidence concerning the Eddy brothers' contract does not demonstrate misconduct or that Chief Conroy is not a fit or proper person to hold the office of fire chief. First, the selection of the SCBA equipment was preliminarily made by the committee which made a recommendation to the Chief. Secondly, as noted by both the state auditor and the City Attorney there was no prohibition at the time the contract was made on business dealings between the City and its employees or firms in which employees had an interest. (Finding of Fact No. 14, Finding of Fact No. 15). The conflict of interest was fully disclosed. The state auditor concluded that the disclosure made by the fire department to the purchasing department abided with the policy in the City Charter. The state auditor was critical of Bob Eddy actually picking up parts from his company for the fire department and of the splitting of purchases into amounts under \$500. However, there was no indication in the record that Chief Conroy was aware that either of these events was occurring. As indicated above, Mayor Latimer reviewed the Eddy brothers contract matter and found no reason to take disciplinary action. (Findings of Fact No. 21).

Personal--Telephone Calls

The record indicates that while Chief Conroy had a cellular mobile telephone in his vehicle, for a period -of approximately eight months, he made personal long distance calls which resulted in a charge to the City. (Finding of Fact No. 19). The Mayor argues that this is the taking of a benefit paid for with public funds which was reimbursed only after the matter was investigated and questions raised by the Finance Department. The evidence does not indicate that Chief Conroy intended to take advantage of a benefit paid for with public funds. He customarily paid for all personal long distance telephone calls and he did so with the cellular telephone by using his credit card. However, there was also a charge per minute for long distance calls on a cellular telephone which was billed to the City. Chief Conroy was apparently unaware of this per-minute charge. In considering whether or not this incident supports cause for removal, it should be noted that the City of Saint Paul had no rule or guideline as to personal telephone calls with cellular telephones. The state auditor's report did not find wrongdoing on the part of the fire chief concerning the use of the cellular telephone. Chief Conroy willingly repaid the amount he owed to the City for his personal calls. That having been done, Mayor Latimer thought it was a "completed matter". Given the facts of this matter it cannot be found to be misconduct of a substantial nature by the fire chief.

Misuse of Authority

The mayor also points to ten incidents which occurred between the early 1970's and approximately 1987, which he contends constitute a misuse of authority by the fire chief - While it is conceded that none of the incidents alone would justify removal from office, it is argued that taken together they establish a pattern of poor judgment in which there was a blurring of the distinction between what belonged to the public and what belonged to the fire chief. The record indicates that in the early 1970s, Chief Conroy occasionally had a firefighter drive him to Metropolitan Stadium. On one occasion when this occurred a three-man fire rig was reduced to two men. (Finding of Fact No. 22). The Mayor argues that this was a serious safety hazard. Additionally, in 1985, the Fire Chief had an on-duty firefighter deliver his car to the airport. (Finding of Fact No. 31).

A part of the background for these incidents is the fact that before Mr. Conroy became fire chief, a fire chief and the assistant fire chiefs had drivers who were firefighters. Chief Conroy discontinued his own driver in 1970 and the drivers for the assistant fire chiefs, two years later. By doing this he saved the fire department 3.5 full-time employees. Additionally, as the fire chief points out, part of the reason for having a firefighter take him to Metropolitan Stadium was to permit him to respond to fires, if necessary.

Chief Conroy took a radio with him to Metropolitan Stadium. There is nothing in the record to indicate that the fire chief was aware that a three-man rig

was reduced to two men. The reason that Chief Conroy called a deputy chief to determine which company could offer a driver, was to be sure that such a situation would not occur. The drive to Metropolitan Stadium from the nearest fire station took approximately 15 minutes. Given the background of the elimination of drivers for the chiefs, these incidents do not amount to misconduct of a substantial nature. Chief Conroy points out that there is no incident of a similar nature in the present term.

In 1976 or 1977, Chief Conroy directed a paramedic unit from St. Paul to Stillwater to pick up Walter Montpetit who had a heart attack while at a fund-raiser for the fire department on a riverboat. (Finding of Fact No. 24). The Mayor argues that this action left the citizens of St. Paul unprotected while conferring a special benefit upon the boosters of the fire department. The evidence establishes that at the time of the occurrence there were six or seven paramedic units in the City of St. Paul and that the fire chief was unaware of any emergency ambulance service in the Stillwater area. The record indicates that Mr. Montpetit, a St. Paul citizen, was in serious difficulty according to the judgment of the paramedics who were in attendance at the fund raiser on the riverboat. Given the fact that Chief Conroy faced an emergency situation, that he was unaware of any paramedic service in Stillwater, and given the nature of the event at which a St. Paul citizen was stricken, the Chief's actions cannot be fairly characterized as misconduct.

During the mid-1970s, Chief Conroy had a business relationship with a firefighter who was in the business of installing carpeting. The firefighter

installed carpeting in Conroy's home when
the firefighter was off-duty and was
paid by the Chief for his
services. On three occasions
however, the
firefighter visited the Chief's home while
on duty to measure or to do a small
repair job. Each visit was less than an
hour. The repair job
was necessitated
by a department party at the Chief's
residence. (Finding of
Fact No. 25).

While the use of on-duty public employees to provide personal services can certainly not be condoned, the fire chief points out that the conduct was reviewed by the state auditor and the Mayor and resulted only in a recommendation that the City review existing policies concerning the use of City employees for purposes indirectly related to the functioning of the fire department. This incident itself is not misconduct of a substantial nature showing that Chief Conroy is not a fit or proper person to hold his office.

For approximately 14 years the fire department maintained a fire service assistance fund which was created because members of the public would send in small contributions in appreciation of receiving (excellent paramedic or fire service from the department. On occasion the fund was used to purchase liquor for parties for graduating recruits or for retiring fire chiefs. (Finding of Fact No. 26). The Mayor argues that this fund was maintained without the knowledge of the Finance Department and was used to pay for items which could not properly be paid for by regular city funds. He suggests that many people would not have wanted their donations used for the purchase of liquor for parties. The record indicates that expenditures of approximately \$33,000 were made during the 14 years of the fund's existence. Of that total, \$4,880 was spent for recognition dinners for paramedics, recruits, hazardous materials teams, and retirees. Only a portion of that amount was spent for liquor. Some \$16,000 was spent for equipment for the department, approximately \$4,600 for gifts to retirees, \$900 in donations to the Gillette Children's Hospital Carnival and toy program and \$714 in donations to injured firefighters and family members. (Finding of Fact No. 27). In short, most of the money in this fund was spent for laudable purposes.

The state auditor concluded that the letter sent to contributors to the fund did not indicate that it would be used for any particular type of expenditure. (Finding of Fact No. 28). The fund was only one of a number in

City departments of which the Finance Department was not aware. Neither the state auditor or the Mayor found any abuse. The Finance Department questioned only whether lunches should have been reimbursed to City employees while they were in the City. (Findings of Fact No. 29). The result of the investigation was that the fund was abolished and expense accounts were established for city departments. The record does not indicate that the Fire Chief violated any law or rule in regard to this fund. It was used in part as an unofficial expense account but also made many worthwhile expenditures. The idea of recognition dinners, apart from the question of liquor, is a legitimate purpose. Given the absence of any rule governing the use of funds such as that in question, and given the proper use of most of the contributions made to the fund, the fire chief's approval of purchases of liquor for parties for graduates or retirees does not constitute misconduct of a substantial nature.

In either 1982 or 1983, Fire Chief Conroy directed two firefighters to deliver an envelope to the Belmont Club, which was owned by Walter Montpetit. One of the firefighters testified that he decided to open the envelope and that it contained political fundraising tickets. The testimony of the firefighter as to the nature of the tickets was unconvincing in light of his evident bias and in light of Chief Conroy's testimony that he had never raised any funds for that particular candidate. It may be that the envelope contained tickets for a fundraiser for the Hook and Ladder Club of which Mr. Montpetit was a member. This allegation is a good example of a stale charge. Chief Conroy was called upon to testify as to an 8-year-old incident. Not surprisingly, he was unable to remember any details.

The final example of a misuse of authority according to the Mayor is Chief Conroy's invitation to an on-duty firefighter to attend a Christmas party for the department at the Chief's house. (Finding of Fact No. 32). At the time of the invitation the firefighter was the president of the union and Chief Conroy had in mind promoting good relations with the union. The Fire Chief has authority to excuse firefighters from their duties for legitimate purposes. This incident does not appear to be so improper as to constitute misconduct on the part of the fire chief which would show that he is not a fit or proper person to hold the office.

As the foregoing discussion indicates, should the City Council determine that acts during 1986 and earlier should be considered as evidence to support discharge on the grounds of misconduct, it is the conclusion of the Administrative Law Judge that misconduct has not been demonstrated. The facts presented by the Mayor together with the explanations provided by Chief Conroy show that the events described were not of a substantial nature and do not demonstrate that Chief Conroy is not a fit and proper person to hold the office of Fire Chief. These facts may also be considered as to the charge of inefficiency or incompetence which is considered below.

Improper Management and Favoritism

The Mayor also alleges that Chief Conroy has improperly managed the fire department. He suggests that as long as Assistant Fire Chief Ed Heinen was alive that he was able to mask the deficiencies of Chief Conroy as a manager. The Mayor concedes that Chief Conroy was a master at the political chores needed to advance such programs as the paramedic operation or free blood pressure checks at the fire stations but argues that he left unresolved the vital workings of key areas in the fire department.

One of the key areas cited by the Mayor is the operations of the

communications center. It is argued that staffing levels at the center, its training and its allegedly inadequate radio system were substantial and major problems plaguing the fire department which Chief Conroy ignored. The evidence indicates that there was insufficient staff at the communications center, that the use of firefighters on "light duty" meant little expertise among dispatchers and that more training was needed. Chief Conroy recognized the need for additional staff. Two factors inhibited the resolution of problems at the communications center as well as in other areas. First, the 1980s has been a time of tighter budgets in the City of St. Paul. In 1982 approximately 40 firefighters were cut from the fire department. (Finding of Fact No. 44). The department has been faced with having to do more with fewer people. Additionally, very few firefighters have been hired since 1983 despite the attrition in the ranks that has occurred due to retirements in that seven-year period. The fire department is still unable to hire due to a challenge by the Minnesota Department of Human Rights to its hiring test for firefighters. Because of this the fire department is presently short approximately 36 firefighters. (Finding of Fact No. 44). In regard to the communications center, a recent study recommended the hiring of civilian personnel instead of firefighters, however, union objections have held this up to date. Although there were problems at the communications center, Chief Conroy was faced with the decision as to whether to adequately staff the fire companies or add

personnel to the communications center. The record does not indicate that Chief Conroy was simply obstinate in refusing to add staff to the communications center. The budget and hiring problems significantly impacted the situation.

The Mayor also suggests that Chief Conroy's failure to adopt standard operating procedures (SOPs) is a severe deficiency in the fire department. The record indicates that a written set of SOPs is necessary for a modern fire department. Not all fire departments have adopted them, however. Chief Conroy did give Assistant Chief Stanger the responsibility for SOPs in 1988. He also sent Stanger to Phoenix to procure their set of SOPs. It appears that adoption of the SOPs required a good deal of discussion among the various division heads. It also appears as though Chief Conroy may have slowed down the process by contributing to the debate about the language of the SOPs and failing to delegate development of the details of the SOPs. Nonetheless, it appears that Chief Conroy was committed to the development of SOPs for the department.

The Mayor points to the arson unit as an example of improper management. He alleges that the unit has had inadequate training as well as inadequate clerical staff and expert support services. A 1990 report on the fire investigation unit recommended specific training and certification of investigators. (Findings of Fact No. 37). The issues of training and adequate staff budget to hire expert personnel are impacted by the departments over a I I budgetary problems. The record indicates that classes were made available to arson investigators in the last two years prior to Chief Conroy taking a leave of absence.

--he Mayor also argues that Chief Conroy was involved in inconsistent and erratic discipline concerning department employees which was aggravated by a lack of any written guidelines as to disciplinary policy. Chief Stanger testified as to what he believed to be Inconsistent discipline given to two

fire captains for the same infraction. (Findings of Fact No. 41). Chief Conroy testified, however, that after the first suspension he authorized the department's supervisors to recommend a new policy on grocery shopping and delayed action on the second violation until the policy was complete. In a 1986 incident Chief Conroy and two of his supervisors questioned Captain Kenneth Kunzer about an evaluation he had done on a firefighter who had worked for him for four days. They apparently believed that the evaluation was not accurate because other supervisors had given the firefighter poor evaluations. After Captain Kunzer advised the supervisors that he would not change the evaluation, the evaluation stood as submitted. Although it is alleged that there was a deliberate lack of disciplinary guidelines on the part of the Chief, the handling of disciplinary matters on a case-by-case basis cannot be necessarily classified as improper management.

The Mayor suggests that an occurrence in 1986 created a state of crisis in the paramedic program. Chief Conroy apparently took the names compiled by the EMS chief for the paramedic training program and allowed them to be diverted into the nest hazardous materials program. (Finding of Fact No. 40). As a consequence one paramedic class had to be cancelled due to a lack of trainees. As Chief Conroy points out, however, no one testified that the paramedic program was in "state of crisis" but rather the testimony was that the paramedics were overworked. The record indicates that Chief Conroy has been actively involved in promoting the paramedic program over the years. (Finding

of Fact No. 66). He was also, of course, responsible for getting the hazardous materials program off to a good start which apparently temporarily impacted the paramedic program.

The Mayor also alleged that Chief Conroy made appointments on the basis of friendship or favoritism. Two appointments were emphasized. Warren Schaub was twice passed over for paramedic chief even though he ranked number one on the tests in 1987 and 1989. The record indicates that Mr. Schaub was well qualified for the position of EMS chief. He had also been an outspoken critic of Chief Conroy for ten years prior to the 1987 appointment. At the time of the 1987 appointment Chief Conroy was frank with Schaub and told him that the assistant chief supervising EMS did not support him and that Conroy felt that Schaub could not be a team player. The medical director at St. Paul Ramsey Medical Center agreed that Schaub might have a difficult time working with Chief Conroy. Schaub himself felt that the candidate picked in 1987 turned out to be an excellent EMS chief. (Finding of Fact No. 51). During 1988 Schaub and Conroy had a discussion at Gullivan's in St. Paul which turned into harsh words. Schaub assumed thereafter that he would not be appointed EMS chief and he was not selected in 1989 even though he again ranked number one. The fire chief does have the discretion to pick anyone of the three names certified to him. It is not surprising that he would bypass someone with whom he could not have an effective working relationship.

The appointment of Gary Trudeau as assistant chief for administration was also criticized. The supervisors association was unhappy with this appointment since Chief Trudeau was not a member of the association and was promoted from the rank of firefighters. Chief Trudeau did have extensive experience as president of the firefighters union for six years and as state president of the Minnesota professional firefighters. His description of his duties in his union activities mirrored in large part the duties for which he is responsible.

as assistant chief for administration. (T. 853).
chief Trudeau is clearly
qualified for the position he holds and is
apparently serving with
distinction.

The allegation of favoritism must be measured
against Chief Conroy's
testimony that of the hundreds of appointments he has
made, he has always
selected the number one ranked candidate except
on six occasions.
Additionally, even those witnesses most critical of Chief
Conroy admit that he
has made a number of excellent appointments to supervisory
positions. For
example, Dennis Kessler testified that the appointments
of Ed Heinen, Larry
Stanger, John DuBois and Milt Miller as assistant chiefs
were good appointments
as was that of Gary Schmidt to deputy chief. He also
testified that Deputy
Chief Sarafolean was the best firefighter in the
department. Additionally,
several witnesses testified that they were appointed by
Chief Conroy despite
not being acquainted with him. Administrative /Assistant
Douglas Friberg was
promoted from firefighter after seeing an ad for the
position in a national
magazine. He did not know Conroy. Fire Marshal Steven
Zaccard learned of his
job from a national magazine when he was working near
Chicago and did not know
Chief Conroy before applying for the job. (Findings of Fact Nos. 54 and
55).

The Mayor also points to the assessment of
chief Conroy's management
ability by a number of witnesses who testified that he was a poor
manager. An
equal number also testified that he was a good manager.
An assessment of the
record indicates that Chief Conroy does have a
centralized management style,
does not delegate much authority, and has occasionally
been a bottleneck for

some decisions. That together with an "open door policy" which permitted firefighters to bypass Supervisors has resulted in Chief Conroy not having a strong working relationship with some of his supervisors. (Finding of Fact No. 43). Nonetheless, the record indicates that he maintained a monthly meeting of all supervisors which was chaired by an assistant chief. (Findings of Fact No. 42). He also commonly listened to different opinions before making a decision.

One factor which must be measured against the allegation of improper management is the success of the St. Paul Fire Department. The witnesses who testified against Chief Conroy in this proceeding nonetheless agreed that St. Paul has an excellent fire department. They believe that this had occurred in spite of Chief Conroy. A 1989 study of the department by an independent consultant found that the department enjoyed an excellent reputation both locally and nationally. (Finding of Fact No. 46). The record also reflects significant achievements on the part of Chief Conroy during his tenure as fire chief beginning in 1966. The Findings of Fact (Nos. 64 through 74) set out some of these achievements including the implementation of the Opticom system, the creation of the paramedic unit, the blood pressure screening program for St. Paul citizens, mandatory physical fitness program for firefighters, the Creation of a hazardous materials response team, the added responsibility of building inspections for certificate of occupancy, and a very low ranking for fire deaths per capita. The fire department has maintained an excellent reputation for service and has been a leader in areas such as the programs described above. while this is a compliment to all those working in the department, Chief Conroy must deserve some part of the credit.

Affirmative Action

The Mayor has also asserted that Chief Conroy has offered no leadership on the issue of female affirmative action in the fire department. It is argued

that he was content to let the union fight the matter out with Mayor Latimer and the City personnel department and following that with the State Human Rights Department. Mayor Latimer did feel that affirmative action was not a high priority for Chief Conroy. The evidence in the record indicates, however, that Chief Conroy was only one player in the events concerning affirmative action. The policy is set by the Mayor and the City Council. The firefighters union has been also very active in formulating affirmative action policy in the department. (Findings of Fact No. 56). At present the hiring of firefighters is frozen due to a challenge by the State Human Rights Department to the hiring test which the Department alleges is discriminatory on the basis of sex. The Mayor decided to defend that test.

Chief Conroy does support hiring women as firefighters. He has directed that any new or remodeled fire stations include a design for accommodations for women firefighters. In 1989 he proposed to Mayor Latimer that two women firefighters be hired under a plan which permitted transfers of minorities from other cities. Chief Conroy also offered evidence into the record of his efforts to hire black firefighters. (Findings of Fact No. 58). There are presently 24 black firefighters on the St. Paul Fire Department. Additionally, Chief Conroy has hired, encouraged, and promoted women in non-firefighter positions such as within the fire prevention unit, which was civilianized in 1980. He encouraged Katherine Reyes to apply for an entry level position in the fire prevention division. She is now assistant fire marshal and is one of

the highest ranking women in a fire prevention division in the country. Chief Conroy also encouraged Carol Witherspoon, currently the administrative assistant to the fire chief, to apply for managerial appointments. Given the fact that it was the City of St. Paul which entered into a compromise with the firefighters union to avoid having affirmative action placed on the ballot and in that the City has decided to defend the last firefighters examination test, it cannot be concluded that Chief Conroy's actions relative to affirmative action constitutes inefficiency or incompetence.

Conclusions

It is the Mayor's contention that the management problems in the department discussed above are of a substantial nature and demonstrate the inefficiency or incompetence of Chief Conroy. The problems described in the Findings of Fact are not extraordinary for a public department. They are the sorts of administrative problems that arise in most organizations. The budget and hiring freeze situations in the department contributed to some of the problems. As a fire chief from another city testified, a fire chief does not get to decide how much is spent, but must determine how to maintain existing service with the funds available (T. 1045). although there are many in the department who do not care for Chief Conroy's management style, it cannot be concluded that he has been incompetent in the performance of his duties. One cannot be fired for cause based upon a record of being an average or mediocre manager or one who has been only partially effective. The Chief has not been charged with failing to carry out specific management objectives outlined by either Mayor Latimer or Mayor Scheibel.

As the Hart case, supra indicates the sufficiency of cause for removal is determined with reference to the character of the office and the qualifications necessary to fill it. The position of fire chief is of course a position of great responsibility. It is a leadership position requiring effective

management of a large number of people. It must also be acknowledged, however, that because of the nature of the fire department and its relationship to the citizens and other agencies, some of its problems may be difficult to solve, especially in light of the budgetary and legal problems facing the department. Additionally, because the decision making is so visible, the decisionmaker will usually attract critics who would have preferred a different result. The Mayor clearly has a lack of confidence in Chief Conroy as a manager presumably based upon the factual incidents discussed above and as related to him by the union president and the head of the supervisors association. However, cause for removal cannot be founded upon a lack of confidence. A six-year term means that an incoming mayor may very well supervise a fire chief or police chief in whom he has a lack of confidence.

The record, considered as a whole, including the evidence from prior terms, does not establish incompetence (or inefficiency on the part of Chief Conroy. Nor is the evidence submitted in support of dismissal substantial within the meaning of Hart, supra, and Ekstedt, supra. The Mayor suggests that the Rockwell case, supra, is particularly relevant to this proceeding. However, the findings in that case contrast significantly with this case in terms of seriousness. In Rockwell the Commissioner of Education failed to deliver certificates for school aid for four years in a row resulting in school districts having to borrow money, overpaid state aids to numerous school districts, issued teacher's certificates to persons he knew lacked the statutory qualifications, and withheld information from the Board of

Education. Rockwell, supra . 6 N.W.2d at 260-262. The findings in this case are not of such a substantial nature. They do not demonstrate that Stephen Conroy is not a fit and proper person to hold the office of fire chief.

Other Alienations

The Mayor asserts that the morale in the fire department could not be worse and several witnesses did indicate that morale was not good. Mayor Latimer felt that the rank and file were demoralized. The Mayor asserts that Chief Conroy is responsible for the situation. The Findings of Fact do not reflect specific findings on "morale" since low morale cannot constitute cause for removal of Chief Conroy in the absence of some action on his part which clearly caused the morale problem. "Morale" is obviously a very subjective matter. As the fire chief points out, reasons for the morale problem offered by the witnesses who appeared on behalf of the Mayor included not only Chief Conroy but also the hiring test, this removal hearing, overwork, and the "culture of arson" articles in the Minneapolis newspaper. Even if a poor morale level could be laid solely at the feet of Chief Conroy, it would still have to be demonstrated that his actions caused the morale problem before it would be relevant to cause for his removal. Those actions are considered in connection with other allegations in this proceeding.

As a separate allegation in the Notice of Termination, the mayor alleged that there was an overwhelming lack of public confidence in the ability of Chief Conroy to operate the fire department. Mayor Scheibel testified at the hearing that he had received telephone calls, letters and visits from people questioning Chief Conroy's ability to lead the fire department. No letters were offered into evidence at the hearing nor did the Mayor identify any particular caller or the contents of the communication. Aside from the failure to support the allegation with specific evidence, it is doubtful that a "lack of public confidence" can constitute cause for removal absent specific actions

by the fire chief which create that lack of public confidence. In Hart, supra, the Supreme Court warned against allegations consisting of generalities without any specification of facts.^{2/} 55 N.W. at 120. Additionally, it would be difficult to sort out, based upon this record, what part of the expressed lack of public confidence related to the articles in the Minneapolis newspaper. It is concluded that the evidence in the record fails to support this allegation.

The Notice of Termination also states that there is an inability for Mayor Scheibel and Chief Conroy to communicate concerning the problems in the fire department. Mayor Scheibel testified that either communication did not occur or Chief Conroy's attorney was present which prevented a direct conversation with Chief Conroy. The record supports a conclusion that the Mayor did not actually attempt to talk to Chief Conroy concerning problems in the fire

^{2/} The termination notice in this case contained few facts and did not provide adequate notice to the respondent of all factual incidents concerning which evidence was to be introduced at the hearing. The respondent was therefore allowed the right to recall any of the Mayor's witnesses for later cross-examination where a lack of notice was apparent. Although preserving his record through timely objections at the hearing, the respondent determined that he was not prejudiced by the notice situation and decided not to recall any witnesses for cross-examination.

department. Mayor Scheibel decided to ask Chief Conroy to resign prior to November 22, 1989. He met with the Chief twice and thereafter, on the first occasion to discuss the Chief resigning and the second time in a pre-termination hearing. There is no evidence that Chief Conroy failed to adequately communicate with the Mayor so that the Mayor could fulfill his proper supervisory function concerning the management of the fire department.

Remedy

The traditional remedy for an improper discharge or suspension is reinstatement and back pay. Silver, Public Employee Discharge and Discipline, 6.1 (John Wiley & Sons 1989); Spurck v. Civil Service Board, 42 N.W.2d 710 (Minn. 1950). See also, Brotherhood of Railway Clerks v. State, 229 N.W.2d 3, 13 (Minn. 1975). Chief Conroy seeks immediate reinstatement and full back pay to March 2, 1990. The Mayor argues, however, that Chief Conroy should have mitigated his damages by accepting employment as a fire captain in the department. which was offered to him by a letter dated March 28, 1990. (Ex. 4). Chief Conroy decided to accept the position as fire captain on the grounds that he is not required to accept employment significantly inferior to that from which he was dismissed. (Ex. 88). In Cooper v. Strange & Warner no. 111 Minn. 177, 126 N. W. 541 (1910) the court determined that a wrongfully discharged employee need not accept employment which was not of a character such as that in which he was employed, or which was of a more menial kind, in order to mitigate his damages. In Cooper the manager of a millinery department was not required to accept a position as a sales clerk. Although the Mayor argues that a fire captain is not a menial job, it is of a more menial kind. It is a union rather than a management position. It would be unreasonable and impractical to require Chief Conroy to work as a captain and then later to

return to a position supervising those who had supervised
hint Accordingly,
the Mayor has not met his burden to show
that Chief Conroy failed to accept
employment of a "like kind or grade".
Henry v. Metropolitan Waste Control
Commission, 401 N.W.2d 401, 407 (Minn. App. 1987).

Full backpay to March 2, 1990, is the appropriate
remedy. Chief Conroy is
also entitled to interest on the back pay
calculated pursuant to Minn. Stat.
334.01, subd. 1. Henry supra, 401 N.W.2d at
407. The Fire Chief also seeks
attorney fees in connection with this
proceeding, however, no authority is
cited to support such an award. The
general rule is that attorneys' fees may
not be awarded in administrative
proceedings absent statutory authority or case
law permitting such an award. Morris v.
Perpich, 421 N.W.2d 333 (Minn. App.
1988); Alyeska Pipeline Serv. Co. v.
Wilderness Soc'v., 421 U.S. 240 (1975);
Watkins v.. Labor & Indus. Review Comm'n.,
117 Wis. 2d 753, 345 N.W.2d 482
(1984). The matter of attorneys' fees is
therefore left for the City Council
to consider.

Summary

The picture that emerges from the
evidence in this case is one of a fire
chief who is less effective as a manager
today than he was at an earlier time
in his tenure. His managerial style
and the difficult decisions which
necessarily had to be made have resulted
in an accumulation of critics within
the department and in a strained
working relationship with some deputy and
district chiefs. However, the testimony and
exhibits which fill this record do

not demonstrate either misconduct or incompetence on the part of Chief Conroy. Nor does it show that he is not a fit or proper person to hold the office. The record demonstrates that Chief Conroy has had successes over the years and has also faced problems which were not fully resolved. It is not surprising that when one examines a 23-year career as fire chief, numerous incidents and examples of management problems can be found. However, even if matters which occurred prior to the Chief's present term are considered, the evidence is not of such a substantial nature that it should overcome the protection granted the Fire chief in the City Charter. What remains after a consideration of the evidence submitted is the desire of the Mayor to have his own team in place as he governs the City of St. Paul, including a new and more effective manager in charge of the fire department. While that desire is understandable, it- does not amount to legal cause for removal.

G.A.B.