IN THE MATTER OF THE ARBITRATION BETWEEN

THE MINNESOTA TEAMSTERS PUBLIC AND LAW ENFORCEMENT EMPLOYEES UNION, LOCAL 320,	)	MINNESOTA BUREAU OF MEDIATION SERVICES CASE NO. 10-PA-0235
Union,	)	
and	)	
THE CITY OF COON RAPIDS,	)	DECISION AND AWARD OF ARBITRATOR
Employer.	)	

APPEARANCES

For the Union:

Patrick J. Kelly
Joseph A. Kelly
Kelly & Lemmons, P.A.
Attorneys at Law
200 Crossroads
7300 Hudson Boulevard
St. Paul, MN 55128

For the Employer:

David A. James
Halleland, Lewis, Nilan & Johnson, P.A.
Attorneys at Law
400 One Financial Plaza
120 South Sixth Street
Minneapolis, MN 55402-4501

On January 26, 2010, in Coon Rapids, Minnesota, a hearing was held before Thomas P. Gallagher, Arbitrator, during which evidence was received concerning a grievance brought by the Union against the Employer. The grievance alleges that the Employer violated the labor agreement between the parties by discharging the grievant, Troy D. Osborn. Post-hearing briefs were received by the arbitrator on February 19, 2010.

FACTS

The City of Coon Rapids (the "City" or the "Employer") is a northern suburb of Minneapolis and St. Paul, Minnesota. The Union is the collective bargaining representative of the non-supervisory employees of the Employer who work in the Employer's Parks Division, including those who hold such classifications as Mechanic, Landscape Technician and Parks Maintenance Worker. The grievant was hired by the Employer in July of 1997 to work part-time as a Parks Ranger, a non-sworn law enforcement position, attached to the Employer's Police Department, but supervised by the Supervisor of the Parks Division.

On April 11, 2002, Joyce P. Hottinger, the Employer's Human Resources Coordinator, sent the grievant the following letter in which she notified him of his transfer to the Employer's Parks Division to work in a full-time position as a Parks Maintenance Worker:

> This letter is to confirm your conditional transfer to the full-time union position of Parks Maintenance Worker, effective Monday, April 15, 2002. Gregg Engle, Parks Supervisor, will continue to be your supervisor in the new position. This conditional transfer is contingent upon you successfully obtaining a Commercial Driver's License and passing a DOT pre-employment physical when you obtain such license. . .
>
> In accordance with [the Union's labor agreement with the Employer], you will serve a three-month probationary period in your new division. At the end of your probationary period, your work performance will be evaluated by your supervisor. As mentioned earlier, obtaining a Commercial Driver's License is a requirement of the Parks Maintenance Worker position. You will have the three-month probationary period to obtain this license. Once you receive this license, you will be included into the City's Drug Test policy and procedures, including random testing.

Within the three-month probation period, the grievant passed two parts of the three-part test for a Commercial Driver's License (hereafter, "CDL" or "Class B license") -- the driving test and the written test -- but he failed the third part, the vehicle inspection test. By early August of 2002, however, he passed the third part of the test and received his CDL.

In early April of 2009, the grievant was arrested and charged with driving with a blood alcohol level of .08 percent or more. He pleaded not guilty to that charge, and, as of the date of the hearing in this matter, that charge was still pending. Nevertheless, on May 8, 2009, in accord with Minnesota law, the Minnesota Department of Public Safety notified the grievant that his Class D driver's license, which permitted him to drive non-commercial vehicles, and his Class B driver's license, which permitted him to drive commercial vehicles, would be revoked as of May 18, 2009. The parties have stipulated that the grievant cannot apply for reinstatement of his Class B driver's license until May 18, 2010, though he was able to obtain reinstatement of his Class D driver's license ninety days after its revocation on May 18, 2009.

On May 15, 2009, Gregg Engle, Supervisor of the Parks Division, sent the grievant the following letter:

> This letter is in response to the revocation of your driver's license. As you know, maintaining a Commercial Driver's License is a minimum requirement of your position. Revocation of both your driver's license and your CDL endorsement significantly impacts the City's ability to deliver services to the Citizens and prevents you from performing the duties of your job as a Maintenance Worker.

> Pursuant to the 2006 Letter of Understanding between Teamsters and the City of Coon Rapids (referenced as Exhibit B to the January 1, 2008 - December 31, 2009 Teamsters Collective Bargaining Agreement), the City will grant a "one-time 60-day accommodation" by assigning you to duties that do not require a driver's license or CDL. The 60-day accommodation will begin on the date your license is revoked on May 18, 2009, and will end on Thursday, July 16, 2009. If you do not have your driver's license or CDL reinstated within 60 days, you will then be unable to meet the minimum qualifications for your position and you may be terminated. If your license status changes in any way, it is your responsibility to notify us immediately.

On August 5, 2008, the parties executed their labor agreement that was effective from January 1, 2008, through December 31, 2009 (the "2008-2009 labor agreement"). On the same date, they executed the "Letter of Understanding" referred to in Engle's letter to the grievant of May 15, 2009. The Letter of Understanding is set out below:

> The purpose of this Letter of Understanding is to assist both Labor and Management in applying new rules for Commercial Drivers License (CDL) holders. The following conditions will apply to all Public Works employees in the Local No. 320 bargaining unit.
>
> 1. If an employee temporarily loses his or her driver's license and/or CDL, the employer will grant a "one-time" 60-day accommodation by assigning the employee to duties that do not require a driver's license or CDL. If the employee does not have his or her driver's license or CDL reinstated within 60 days, the employee may be terminated.
>
> 2. If an employee is convicted for an alcohol or controlled substance-related violation, which results in the loss of a driver's license for more than 60 days, the employee may be terminated.
>
> 3. The application of this agreement will begin as of the date of an employee's license revocation regardless of subsequent procedures contesting the revocation.
>
> 4. This Letter of Understanding applies to driving violations outside the workplace.

5. This Letter of Understanding does not include positive test results from the Department of Transportation's required random testing.

This Letter will remain in effect until December 31, 2009. This Letter of Understanding may be extended, modified, or eliminated at either party's request.

On July 14, 2009, Matthew S. Fulton, the Employer's City Manager, sent the grievant the following letter, discharging him:

> In a letter dated May 15, 2009, the City granted you a "one-time 60-day accommodation" beginning May 18, 2009, due to your driver's license revocation. This one-time accommodation was pursuant to the 2006 [sic] Letter of Understanding between the Teamsters and the City of Coon Rapids (referenced as Exhibit B to the [2008-2009 labor agreement]).
>
> The 60-day accommodation period is scheduled to end on Thursday, July 16, 2009. To date, you have not informed the City of any changes in the status of your revoked license. It is my understanding that you will not hold a valid Commercial Driver's license at the end of the accommodation period. As you know, maintaining a Commercial Driver's License (CDL) is a minimum qualification of your position. Without a CDL you are unable to perform the duties of your job as a Parks Maintenance Worker. Regretfully, I have no choice but to inform you that your employment with the City will be terminated, effective July 17, 2009. . . .

On July 21, 2009, the Union brought the present grievance, challenging the grievant's discharge. It alleges that by discharging the grievant the Employer violated Section 22.1 of the 2008-2009 labor agreement, which provides:

> The Employer will discipline employees for just cause only. Discipline will be in the form of:
>
> a. Oral reprimand;
> b. Written reprimand;
> c. Suspension;
> d. Demotion; or
> e. Discharge.
>
> Suspensions, demotions and discharges will be in written form.

DECISION

The parties agree that the primary issue presented is whether the Employer had just cause to discharge the grievant.

The Employer argues that it had just cause to do so because the Letter of Understanding provides that, if an employee whose CDL has been revoked "does not have his or her driver's license or CDL reinstated within 60 days, the employee may be terminated." As the Employer interprets this provision, it states the parties' agreement that the Employer will have discretion to discharge such an employee -- a discretion that is not limited by the labor agreement. The Employer argues that, because the grievant's CDL was not reinstated within the sixty-day accommodation period, his discharge was permitted by the Letter of Understanding, which, in the Employer's view, is paramount to the progressive discipline and just cause standards established by Section 22.1 of the labor agreement.

In addition, the Employer argues that, because the grievant had no commercial driver's license at the time of his discharge and no prospect of obtaining one until May 18, 2010, he was unable to perform many of the essential functions of his job, as specified in the job description of a Parks Maintenance Worker. Therefore, the Employer argues that, even in the absence of the discretion to discharge provided by the Letter of Understanding, it had just cause to discharge the grievant because it should be under no obligation to retain an employee who cannot fully perform his duties.

The Union argues that, notwithstanding the language of the Letter of Understanding, the Employer is bound by Section

22.1 of the labor agreement and that, in accord with that provision, the Employer was required to use progressive discipline when exercising its discretion whether to discharge the grievant. The Union urges that the Employer could have accommodated the grievant for an additional period -- assigning him to the many duties of a Parks Maintenance Worker that do not require a CDL, just as it did during the grievant's probation period in 2002 and during the sixty-day accommodation period in 2009 that ended with his discharge. The Union argues that the grievant's performance record and his record of previous discipline, though not perfect, did not justify the use of discharge rather than one of the lesser penalties described in Section 22.1.

The evidence shows that the grievant performed his duties satisfactorily, but that, in 2008, he received several warnings and was suspended for one day, July 2, 2008, because of failure to request leave properly when absent on several Fridays or Mondays. After that one-day suspension, the Employer required the grievant to present a written statement from a health care provider if he was absent for illness on a Friday or Monday. That requirement was rescinded in March of 2009, and then reimposed in June of 2009.

The Union also makes the following argument. In October of 2007, in separate incidents, two Firefighters, John A. Fick and James R. Ktytor -- members of a local affiliate of the International Association of Firefighters (the "IAFF") -- each lost his CDL after an off-duty alcohol-related driving

infraction. As discipline, each of them was suspended for one work shift of twenty-four hours, as described in the following letter from the Employer's Fire Chief, John Piper, to Ktytor (which has substantially the same wording as a letter from Piper to Fick):

> This letter constitutes official notice of your suspension without pay for one 24-hour shift because of the revocation of your driver's license on September 9, 2007. Your driver's license was revoked for 30 days because of a [driving while intoxicated] arrest on September 2, 2007. . .
>
> As you are aware, your job description as [a] Firefighter for the City of Coon Rapids requires you to possess a valid Class B license as a minimum job qualification. During the investigation of this matter it has been learned that your Class B license will be suspended for one year and that you will receive a class D license in the interim. Because state law allows a person with a Class D license to drive a fire truck, the City will allow you to work as a Firefighter during this interim period. Once you are eligible for your Class B license, you must immediately take the steps necessary to have it reinstated and provide verification that you have done so.
>
> You have been unable to work while your driver's license has been revoked, leaving your fellow Firefighters, the City, and the residents of Coon Rapids in an unacceptable position. The City has been willing to work with you during the period you have had a limited work permit. However, please be advised that any future loss of your driver's license will result in the termination of your employment. . . .

The Union argues that the Employer's decision to discharge the grievant for conduct similar to the conduct for which it decided merely to suspend Fick and Ktytor for one work shift was disparate treatment that unfairly discriminated against the grievant. The Union also argues that the decision to suspend Fick and Ktytor establishes a binding past practice that requires the Employer to treat the grievant similarly.

The Employer responds as follows. There are substantial differences in the relevant circumstances affecting the choice of discipline of the grievant as compared to the choice of discipline of the two Firefighters. The Employer notes that, though a Minnesota statute expressly permits a Firefighter to operate fire equipment without a CDL, no such statute exempts the grievant from government regulations requiring a CDL to operate the two pieces of heavy equipment used by the Parks Division -- a Tanker truck used to flood ice rinks and a heavy truck borrowed from time to time from the Employer's Streets Division. The Employer also argues that an additional relevant difference affecting its decision to suspend the two Firefighters is that its agreement with the IAFF did not include a provision similar to the Letter of Understanding with the Union.

I make the following additional findings of fact and rulings. I agree with the Employer's argument that, because a statutory exemption allowed the two Firefighters to operate fire equipment vehicles without a CDL, the relevant circumstances in their cases were different from those in the grievant's case. The Firefighters, through a statutory exemption, were able to perform all of their duties despite the loss of their CDLs, whereas no such exemption allowed the grievant to operate commercial vehicles without a CDL. Accordingly, I rule that the Employer's decision not to discharge the two Firefighters, but, instead, to suspend them, was reasonable and was not disparate as compared to its disposition of the grievant's case. In addition, I rule that the decision to suspend the Firefighters

did not establish a binding practice relating to the retention of an employee who cannot perform required duties because of the loss of his CDL.

Much of the evidence presented by the parties concerned their disagreement about the amount of work that a Parks Maintenance Worker actually does that requires a CDL. This evidence shows that, such work is not a substantial part of the total work done by the Parks Maintenance Workers. Nevertheless, I rule that, except as the entirety of the parties' labor agreement may provide -- a subject I discuss below -- the Employer should not be required to retain in active employment a Parks Maintenance Worker who cannot perform all of the work specified in his position's job description for a period greater than the sixty-day period established by its specific agreement, i.e., by the Letter of Understanding.

A primary principle of contract interpretation is that the interpreter should not interpret any one of its parts in isolation, but, instead, should interpret the agreement as a whole, insofar as several parts of the agreement may be relevantly inter-related. In the present case, two parts of the agreement are relevant -- the Letter of Understanding and Section 22.1. Both provisions were executed on the same date, August 5, 2008. Because they were executed at the same time, presumably, the parties did not intend that either provision have precedence over the other, except as the wording of each provision might expressly or impliedly establish such precedence.

Accordingly, I must find the parties' agreement about the discharge of the grievant from an integrated interpretation of the Letter of Understanding and Section 22.1 of the labor agreement. Section 22.1 requires the Employer to use "just cause," and, if appropriate, progressive discipline when deciding whether to continue the grievant's employment. In relevant part, the Letter of Understanding provides that, "if an employee temporarily loses his [CDL], the employer will grant a 'one-time' 60-day accommodation by assigning the employee to duties that do not require a [CDL]" and that, "if the employee does not have his [CDL] reinstated within 60 days, the employee may be terminated." (Hereafter, for simplicity, I sometimes refer to this part of the Letter of Understanding as "the quoted clause.")

The parties have different interpretations of the relationship between Section 22.1 and the quoted clause of the Letter of Understanding. The Employer reads the quoted clause as one that gives the Employer complete discretion to discharge an employee who has lost his or her CDL after sixty days of active employment performing duties other than those requiring a CDL. As the Employer interprets the quoted clause, the discretion to discharge that it establishes is not limited in any way by Section 22.1. The Union, however, reads the quoted clause in the Letter of Understanding as a provision that does not give the Employer complete discretion to discharge such an employee, but, instead, gives a discretion that is subject to limitations established by Section 22.1. According to the Union, the Employer must use appropriate progressive discipline

exercised in accord with the just-cause standard, even after the expiration of a sixty-day accommodation period.

I interpret the two provisions as follows. In the absence of an express statement in the Letter of Understanding that the parties intended it to supersede the simultaneously executed requirements of Section 22.1, I rule that both provisions should be given effect, insofar as that is possible. Thus, the progressive discipline and just cause standards of Section 22.1 remain as a limitation on the Employer's discretion to terminate that is established by the quoted clause of the Letter of Understanding. The quoted clause requires the Employer to provide an employee who has lost his or her CDL "a 'one-time' 60-day accommodation by assigning the employee to duties that do not require a [CDL]," i.e., to continue the employee's active employment for the sixty-day period. As I interpret the parties' agreement in its entirety, they intended that, after the sixty-day period of accommodation, the employee "may be terminated" if such termination is justified under appropriate progressive discipline and just cause standards established by Section 22.1. The Employer had discretion to extend the accommodation period beyond sixty days by continuing the grievant's active employment despite his inability to perform duties requiring a CDL, but the Employer had no obligation to do so. The quoted clause clearly limits the Employer's obligation to continue active employment of an employee without a CDL to a period of sixty days.

Nevertheless, the requirements of Section 22.1 remain as an underlying contractual limitation of the quoted clause. The

evidence shows that the grievant's employment record -- with adequate work performance and minimal previous discipline -- does not justify discharge under the progressive discipline and just cause standards established by Section 22.1.

The award below is appropriate to these circumstances. Except by its own consent, which it is unwilling to give, the Employer should not be required to extend the period of the grievant's active employment without his CDL licensure. The grievant, however, has been an able Parks Maintenance Worker, and, presumably, with the reinstatemnet of his CDL, he will continue to perform as such.

The award that best fits these circumstances is a conditional reinstatement of the grievant, with a reduction of his discharge to a long-term suspension that will last until he can again fulfill all of the requirements of a Parks Maintenance Worker by obtaining his CDL. This award resolves the Employer's objection to continuing the active employment of the grievant when he is unable to perform all of the duties of his position, but it preserves his opportunity to regain active employment, thus giving effect both to the Letter of Understanding and to Section 22.1 of the labor agreement.

By its incorporation of this paragraph, the award makes the grievant's reinstatement conditional upon his obtaining a CDL. So that the Employer's obligation to reinstate him is not open ended, the award provides that he must complete the process of relicensure within ninety days following May 18, 2010, unless unusual circumstance prevent such relicensure.

AWARD

The grievance is sustained upon the conditions stated above. When the grievant again obtains his CDL, the Employer shall reinstate him without loss of seniority and without back pay. The time between the grievant's discharge on July 17, 2009, and his return to work after his relicensure shall be treated as a suspension without pay, undergone because of his temporary inability to qualify for the Parks Maintenance Worker's classification.

I retain jurisdiction for the purpose of resolving any disputes that may arise concerning the implementation of this award.

April 20, 2010

Thomas P. Gallagher, Arbitrator